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No. 77-870

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

MISSOURI PACIFIC RAILROAD COMPANY,
Petitioner,

v.

CITY OF PALESTINE, TEXAS,
ANDERSON COUNTY, TEXAS, ET AL.,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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SUBJECT INDEX

	Page
PREFACE	1
QUESTIONS PRESENTED	5
SUPPLEMENTAL STATEMENT OF THE CASE	6
A. Prior Proceedings	6
B. Negotiations For The 1954 Agreement	8
C. Approval By The District Court Of Cherokee County, Texas	10
D. Approval By The Interstate Commerce Commission	10
E. Evidence Before The ICC And The Commission's Findings	12
THERE ARE NO VALID REASONS FOR GRANTING A WRIT	14
I. The Decision Below Is Not Contrary To, But In Keeping With, Other Decisions Of This Court	14
II. The Decision Of The Court Below Under The Facts Of This Case Cannot Possibly Have Any Impact On The Development Of Efficient And Economic Rail Systems	29
III. The Decision Below Is Not Contrary To Decisions Of Other Courts Of Appeals Construing The Commission's Authority Under Sections 5(2) And 5(11) Of The Interstate Commerce Act	34
PRAYER	35
CERTIFICATE OF SERVICE	35

APPENDIX INDEX

Excerpts from Petitioner's Application to ICC	A-1
Exhibit No. 10 — Palestine Agreement	A-13

INDEX OF AUTHORITIES

Cases

	Page
Arkansas Natural Gas Co. v. *Arkansas Railroad Commission*, 261 U.S. 379, 67 L.Ed. 705 (1923)	31
Breswick & Co. v. *United States*, 134 F.Supp. 132 (D. N.Y. 1955)	30
Callaway v. *Benton*, 336 U.S. 132, 93 L.Ed. 553 (1949)	17
City of Tyler v. *St. Louis Southwestern Ry. Co. of Texas*, 405 S.W.2d 330 (Tex. Sup. Ct. 1966)	25, 26
Contemporary Music Group, Inc. v. *Chicago Park District*, 343 F.Supp. 505 (D. Ill. 1972)	19
Federal Power Commission v. *Sierra Pacific Power Co.*, 350 U.S. 348, 100 L.Ed. 388 (1956)	31, 32
Four Packages of Cut Diamonds v. *United States*, 256 F. 305 (2nd Cir. 1919)	19
General American Tank Car Corporation v. *El Dorado Term. Co.*, 308 U.S. 422, 84 L.Ed. 361 (1940), reh. den. 309 U.S. 694, 84 L.Ed. 1035	16
Gulf, Mobile & Ohio Railroad Co. v. *Illinois Central Railroad Co.*, 225 F.2d 816 (5th Cir. 1955), cert. den., 350 U.S. 932, 100 L.Ed. 815	15, 30, 31
In Re Missouri Pacific Railroad Company, 39 F.Supp. 436, (D. Mo. 1941), app. dis., 134 F.2d 139 (8th Cir. 1943), cert. dis. and den., 320 U.S. 785, 88 L.Ed. 487, 64 F.Supp. 64 (D. Mo. 1945), aff'd., 163 F.2d 350, aff'd., 335 U.S. 211, 92 L.Ed. 1911 (1947); 93 F.Supp. 832 (D. Mo. 1950), aff'd., 191 F.2d 265 (8th Cir. 1951), cert. den., 342 U.S. 904, 96 L.Ed. 676, 686, 1339, 1372 (1952)	6, 7
International & Great Northern Ry. Co., et al v. *Anderson County, et al*, 246 U.S. 424, 62 L.Ed. 807 (1918)	6
Interstate Commerce Commission v. *Dunn*, 166 F.2d 116 (5th Cir. 1948)	23
Kansas City Southern Railway Company Merger, 254 I.C.C. 529 (1943)	23
Landon v. *Town of Litchfield*, 11 Conn. 251	19
McMurray v. *Wright*, 73 P. 257 (Colo. Ct. App. 1903)	19

	Page
Missouri Pacific Railroad Company Reorganization, Finance Docket No. 9918; 239 I.C.C. 7; 240 I.C.C. 15; 257 I.C.C. 479, 745, 275 I.C.C. 59, 203; 290 I.C.C. 477, 674	6
Missouri Pacific Railroad Company Merger, Finance Docket No. 27773, 348 I.C.C. 414 (1976)	4, 12, 14, 32, 33
New Haven Inclusion Cases, 399 U.S. 392, 26 L.Ed.2d 691 (1970)	16
Penn Central Merger & N. & W. Inclusion Cases, 389 U.S. 486, 19 L.Ed.2d 723 (1968)	16
Railroad Telegraphers v. *Chicago & N.W. R. Co.*, 362 U.S. 330, 4 L. Ed.2d 774 (1960)	32
Regents of the University System of Georgia v. *Carroll*, 338 U.S. 586, 94 L.Ed. 363 (1950)	14, 23
St. Joe Paper Company v. *Atlantic C.L.R. Co.*, 347 U.S. 298, 98 L.Ed. 710 (1934), reh. den., 347 U.S. 980, 98 L.Ed. 1118	16
St. Louis Southwestern Railway Company of Texas Lease, 290 I.C.C. 205 (1953)	23
St. Louis Southwestern Railway Co. v. *City of Tyler, Texas*, 375 F.2d 938 (5th Cir. 1967)	26
St. Louis Southwestern Railway Co. of Texas v. *City of Tyler*, 422 S.W.2d 780 (Tex. Civ. App. 1968), writ ref. n.r.e.	26, 28
Schwabacher v. *United States*, 334 U.S. 182, 92 L.Ed. 1305 (1948)	16, 19, 20, 21
Seaboard Air Line R. Co. v. *Daniel*, 333 U.S. 118, 92 L.Ed. 580 (1948)	20, 21
Stenger v. *Stenger Broadcasting Corp.*, 28 F.Supp. 407 (D. Penna. 1939)	15
Swift v. *Tyson*, 41 U.S. (16 Pet.) 1, 10 L.Ed. 865 (1842)	19
Texas & New Orleans Railroad Co. v. *Brotherhood of Railroad Trainmen*, 307 F.2d 151 (1962), cert. den., 371 U.S. 952, 9 L.Ed.2d 500	34
Texas v. *United States*, 292 U.S. 522, 78 L.Ed. 1402 (1934)	20, 21, 27
United States v. *Chicago, M. St. P & P. R. Co.*, 282 U.S. 311, 75 L.Ed. 359 (1931)	17
United States v. *Fruit Growers Express Co.*, 279 U.S. 363, 73 L.Ed. 739 (1929)	16
Wood v. *United States*, 132 F.Supp. 586 (D. N.Y. 1955)	17

TEXTS

Words and Phrases, Vol. 24A, page 13 19

STATUTES

United States Bankruptcy Act, 11 U.S.C.A. § 205(n) 7

Interstate Commerce Act

49 U.S.C.A. § 5(2) 5, 18, 34

49 U.S.C.A. § 5(11) 4, 5, 14, 17, 22, 23, 29, 34

RULES

Texas Rules of Civil Procedure, Rule 483 28

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

To The Supreme Court Of The United States:

PREFACE

This case involves the attempt of Missouri Pacific Railroad Company ("Missouri Pacific"), to rid itself of a written contract dated December 21, 1954, the obligations of which were expressly assumed by Missouri Pacific, and which its then wholly-owned subsidiary, International-Great Northern Railroad Company ("I-GN"), voluntarily made with the City of Palestine, Texas, Anderson County, Texas, and certain citizens, acting as representatives of a class composed of all of the citizens of such City and

County. Such contract is copied in full in the Appendix to this Brief.

The procedure chosen by the Railroad to abrogate this contract was to file an application with the Interstate Commerce Commission ("ICC"), to have that body approve a merger agreement dated July 29, 1974, which the parent, Missouri Pacific, had made with its controlled subsidiaries, The Texas and Pacific Railroad Company and Chicago & Eastern Illinois Railroad Company, providing, in effect, that upon the merger of these subsidiaries into the parent, the parent would no longer be bound by its 1954 Agreement with the City and County. Excerpts from such application to the ICC are also set out in the Appendix to this Brief.

The merger, as such, was unopposed before the Commission. Respondents intervened to oppose abrogation of the contract and their position was supported by the State of Texas and by the Railway Employees' Department, AFL-CIO. Such agency and other labor groups also sought labor protective conditions in the merger order more favorable than those proposed by the Railroad. The only other active participant in the proceeding was the Chicago, Rock Island and Pacific Railroad Co., appearing through its bankruptcy Trustee, which sought inclusion in the merger or indemnification for losses, which it alleged would be sustained, if not included.

The Railroad's application to the Commission stated that "MoPac has had direct control of T&P for over half a century"; that "Both T&P and C&EI are operated, and have been for some time, as a part of an integrated Missouri Pacific System". At the hearing, Missouri Pacific's president testified that by 1964 the coordination of all departments of the three railroads was completed, that each

department operates "today as a single cohesive unit", and that the purpose of the merger was to accomplish the "formal amalgamation" of that which had been true *de facto* for a number of years. Further, the application to the Commission stated that the decision to merge was the act of Missouri Pacific and its stockholders, that the three railroads were not independent lines, but were controlled by Mississippi River Corporation, and that the "contract" to merge was not "an arms length transaction".

We think the Court should further note that Exhibit 9 to the application showed that Missouri Pacific had not been in or near an operating loss position for any year of the period reported (1969 through the first eight months of 1974); that Missouri Pacific's net income for 1973 was in excess of $21,500,000, for the first eight months of 1974, in excess of $32,500,000; that it paid its stockholders dividends of $10,123,170 in 1973, and $9,539,166 in 1974; and that, on a consolidated basis for January 1 through August 31, 1974, after giving effect to the merger, the net income for such eight months would have been $40,775,043. Operations under the Palestine Agreement have thus been profitable to Missouri Pacific, and the extra cost,[1] if any, in not allowing the railroad to abrogate its contract with Palestine *means only a slight reduction in the net profits available for paying dividends.*

Notwithstanding these facts, the ICC held that it had the power to, and purported to, nullify the contract with Pales-

[1] There was no evidence or finding of *any* extra cost other than the claimed saving of $240,000 by transferring 64 freight claims employees from Palestine to St. Louis. The testimony showed that additional shop facilities were contemplated in the area between Palestine and Houston, Texas. When the railroad enlarges its shop facilities in the Palestine area it will, no doubt, need additional shop employees equal to or in excess of the 64 freight claims jobs it wants to move out of Palestine. This is the way the agreement was intended to work for the railroad.

tine as requested by Missouri Pacific, but such decision was not unanimous. Commissioner O'Neal filed a dissenting opinion, stating:

> "The Palestine Agreement is not an impediment to this merger. *** And there is no overriding public policy, reason for abrogating the contract, even if we make the doubtful assumption that the Commission could do so in this case.
>
> • • •
>
> "This holding, if allowed to stand on the basis of these facts, sets a precedent by which the Commission allows carriers to escape their contract obligations merely on a showing that it would be to the carrier's advantage to do so. The contract in question was freely entered into, and its abrogation will greatly harm, if not devastate, the economy of Palestine, Tex. Abrogation in this case serves no public purpose, only the private purposes of the railroad. Our statutory authority in this area has its limits, and in this proceeding the Commission has exceeded those limits. Even if we were to have the authority, however, it should not be used in these circumstances."
>
> See App. 33-34 to the Petition

In its application to the Commission, the Missouri Pacific asked to be relieved from any of the obligations imposed on it by various railroad statutes of Texas, all of which are discussed in detail in the Initial Decision of the Administrative Law Judge which was adopted by the Commission. Such Initial Decision gave equal billing to these statutes and the 1954 Palestine Agreement, which such Judge concluded was but an "extension" of these statutes and a "restraint of law" within the meaning of Section 5(11) of the Interstate Commerce Act. Missouri Pacific's Petition still speaks of these "state law restraints",

and, of necessity, must do so since the cases it relies upon are cases where state laws and constitutional provisions were involved and not contractual obligations voluntarily assumed.

Let it be clearly understood that neither Respondents nor any other party to the proceeding offered any objection whatever to Missouri Pacific's request that it be relieved from any of the obligations imposed by the Texas Railroad Statutes. As is apparent on its face, the 1954 Agreement is in no way dependent upon or aided by any such statute of the Texas Legislature. On the contrary, the Agreement provides that the Railroad shall *not* be required to maintain any general offices, machine shops or roundhouses at Palestine.

It would appear that the Missouri Pacific no longer has a willing ally in the ICC, as counsel for the Commission has informed Respondents that the ICC has voted not to file a Petition for a Writ of Certiorari to review the 5th Circuit Court's decision in this case. Either the ICC is satisfied that the Circuit Court (which, in effect, sustained the dissenting opinion of Commissioner O'Neal) is correct, or, at least, is unwilling under the facts of this case, to further assist the railroad to abrogate its contract with Palestine.

QUESTIONS PRESENTED

This case does *not* involve any "state law restraints" as stated in the Petition. The questions before the Court below and now presented by the Petition involve *the statutory authority of the ICC* under Sections 5(2) and 5(11) of the Interstate Commerce Act *to nullify a third party contract, entirely collateral to the merger, in an unopposed "family line" merger of three profitable railroads.*

SUPPLEMENTAL STATEMENT OF THE CASE

In addition to the factual matters set out in the 5th Circuit Court's opinion, we respectfully suggest that the following additional factual background is noteworthy:

A. Prior Proceedings

At the time of its 1954 agreement with the City and County, Missouri Pacific and its controlled subsidiaries, including I-GN had been involved in bankruptcy reorganization proceedings for more than twenty years. Various plans had been considered by the Court and by the Commission and either rejected, revised, reconsidered or appealed.[2]

Throughout the long course of these proceedings the debtor railroads and the Commission always favored reorganizing all of the debtor railroads, including I-GN, into one new Missouri Pacific Railroad Company and it was so provided in the original plan of reorganization. In its Report dated January 10, 1940, approving that plan with certain modifications, 239 I.C.C. 7, the Commission referred to a judgment of the Texas courts, affirmed by the United States Supreme Court,[3] ordering the railroad "to forever keep and maintain its general offices, machine shops and

[2] The course of these proceedings are reflected in part by the following orders, reports and opinions: *Missouri Pacific Railroad Company Reorganization*, Finance Docket No. 9918, 239 I.C.C. 7, 240 I.C.C. 15, 257 I.C.C. 479, 745, 275 I.C.C. 59, 203; 290 I.C.C. 477, 674. *In Re Missouri Pacific R. Co.*, 39 F. Supp. 436 (D. Mo. 1941), app. dis., 134 F.2d 139 (8th Cir. 1943), cert. dis. and denied, 320 U.S. 785, 88 L.Ed. 487; 64 F. Supp. 64 (D. Mo. 1945), aff'd., 163 F.2d 350, aff'd. 335 U.S. 211, 92 L.Ed. 1911 (1947); 93 F.Supp. 832 (D. Mo. 1950), aff'd., 191 F.2d 265 (8th Cir. 1951), cert. den. 342 U.S. 904, 96 L.Ed. 676, 686, 1339, 1372 (1952).

[3] *International & G. N. Ry. Co.* v. *Anderson County*, 246 U.S. 424, 62 L.Ed. 807 (1918).

roundhouses in Palestine"; noted the recommendation of the Examiner that the plan expressly provide that the consolidation would not affect the rights of the parties under such judgment, but held that Section 77(n) of the Bankruptcy Act (11 U.S.C.A. § 205(n))[4] made inclusion of such a provision unnecessary.

In a supplemental report dated April 9, 1940, Commissioner Splawn stated that to protect Palestine's rights, the plan should not permit the I-GN properties to be sold to outside interests without rendering the plan inoperative, or permit an exclusion of the I-GN from the reorganization if I-GN's creditors did not agree to the plan. 240 I.C.C. at page 31. When this plan reached the Bankruptcy Court for approval, that Court held that "in the absence of some modification of the decree in the State Court", then "either the general offices of the consolidated company must be moved to Palestine, or else the International-Great Northern must continue to be operated separately". The Court also said that *"Should the Reorganization Managers secure a modification of the decree in the Anderson County case"*,• then it was the opinion of the Court that the plan should be literally carried out through the medium of a single consolidated company. *In Re Missouri Pacific R. Co.*, 39 F.Supp. 436 (D. Mo. 1941) at pages 448, 449. From then on, the plan provided, alternatively, for the separate incorporation of I-GN "unless a modification of the decree can

[4] "No reorganization effected under this title and no order of the court or Commission in connection therewith shall relieve any carrier from the obligation of any final judgment of any Federal or State court rendered prior to January 1, 1929, against such carrier or against one of its predecessors in title, requiring the maintenance of offices, shops, and roundhouses at any place, where such judgment was rendered on account of the making of a valid contract or contracts by such carrier or one of its predecessors in title."

• Unless otherwise indicated, all emphasis in quotations is supplied.

be obtained". Supplemental Report dated July 4, 1944, 257 I.C.C. 479, at page 559.[5]

B. Negotiations For The 1954 Agreement

Since a final plan of reorganization, approved by the Commission, was not achieved until the issuance of the Commission's order of July 29, 1954 (290 I.C.C. 477; subsequently modified, 290 I.C.C. 674), it was not until then that the railroad could pursue the several suggestions of the Commission and the Bankruptcy Court that an attempt be made "to secure a modification of the decree".

Negotiations ensued. As Exhibit "A" to the 1954 Agreement shows, in 1954 the railroad had reduced its employee payroll at Palestine by some 90 employees and railroad employment in Palestine was at the lowest point since 1941. Under these circumstances the railroad found the City and County receptive to overtures promising the promotion and stabilization of railroad jobs there. The City relinquished any claim to have the entire general office forces of the Missouri Pacific moved to Palestine and agreed with Missouri Pacific that the City was entitled to the equivalent of the work force which would be stationed at Palestine if I-GN was operated as a separate railroad.

[5] In a concurring opinion Commissioner Splawn had the following to say about a future proceeding to annul the 1914 judgment of the Texas court: "I do not wish at this time and upon the present record to express an opinion as to whether the Commission has the power, acting in the future under the jurisdiction conferred upon it by Section 5 of the Interstate Commerce Act, to nullify the judgment obtained in the Texas courts in respect to the Palestine matter although the Commission is now expressly prevented from doing so in the bankruptcy proceeding. It would seem at the least that the Commission might be reluctant, if such a separate proceeding were later instituted, to circumvent the present expressed intention of Congress that such contracts should not be nullified." 257 I.C.C. at page 565.

The Railroad represented that with flexibility permitting it to station *either* office workers *or* shop workers *or* some of both at Palestine at any time and from time to time, it would have no difficulty in performing the agreement. Petition For Leave To Intervene, pps. 7-8.[6] The railroad proposed that in return for (a) a release from its obligations under the 1914 judgment to maintain general offices, machine shops, roundhouses and certain titled positions at Palestine, and (b) a promise on the part of the City and County (to be consented to and approved by the Attorney General of Texas) not to sue for money damages, penalties and forfeitures, the railroad would agree to maintain a stated percentage, subject to reduction in the event of future mergers and consolidations, of certain I.C.C. classifications of its system employees at Palestine. The City and County agreed. The City then passed an ordinance and the County Commissioners' Court an order authorizing the new agreement. Contemporaneously, the Railroad's Bankruptcy Trustee moved the Bankruptcy Court for, and secured, an order authorizing the Railroad to make the agreement. Such Motion recited that one purpose of the agreement was to provide for more definitely fixing the Railroad's employment obligations at Palestine in the event of future affiliations and consolidations with other railroads and that "said agreement is in the interest of the estate of the Debtor". Petition For Leave To Intervene, page 5. In accordance with the terms of the new agreement the City, County and Railroad then applied to the District Court of Cherokee County, Texas, for a revised judgment setting aside the 1914 judgment and approving the new agreement in lieu thereof.

[6] At the I.C.C. hearing it was stipulated and agreed that all factual statements contained in Palestine's Petition To Intervene could be accepted without further proof.

C. Approval By The District Court Of Cherokee County, Texas

However, all citizens were not convinced that the agreement would be mutually beneficial or would be performed in good faith by the railroad. As the Commission's Report and Order shows (348 I.C.C. at page 436), a group of citizens intervened in the State District Court proceeding to oppose approval of the new agreement by the Court and an adversary trial was held. At that trial the Chief Executive Officer of the railroad testified that one of the reasons for the agreement was to fix the railroad's obligations in the event of future combinations. He further testified that "we feel that we can always find sufficient work to do at Palestine and personnel to keep there; we don't think there will be any trouble about maintaining that percentage. *We are willing to take on that obligation*". 348 I.C.C. at pages 436, 437. At the conclusion of the trial, fully participated in by the City, County, Railroad, the citizens for and the citizens against, and with a consent and waiver filed by the Attorney General in behalf of the State of Texas, the new agreement was approved by the Court and incorporated in its judgment dated March 2, 1955.

D. Approval By The Interstate Commerce Commission

The 1954 Agreement provided that the City and County might, at their election, apply to the Interstate Commerce Commission for approval of the new agreement and that in such event the railroad would join with the City and County in presenting and seeking such approval. However, by a letter dated July 28, 1955, the Secretary of the Commission wrote the City and County that "it would seem that the Commission would have no jurisdiction to entertain an independent application for the approval of the agreement in

question. * * * As you probably know, the Commission's order of July 29, 1954, approving a plan for the reorganization of the International-Great Northern and other debtors, contemplates the filing of an application to carry out the plan under either the Bankruptcy Act or the Interstate Commerce Act upon confirmation of the plan by the court. In that connection, a timely application along the lines disclosed in your letter requesting approval of the agreement will be processed for determination by the Commission in due course." Petition For Leave To Intervene, p. 10.

The plan of reorganization was confirmed by the Bankruptcy Court on September 19, 1955, and by an application dated January 6, 1956, the Reorganization Managers applied to the Commission for an order authorizing them to consummate the plan by reorganizing all of the debtors into one company, i.e., Missouri Pacific Railroad Company, which would include the properties of the International-Great Northern. This application specifically referred to the 1954 Agreement as an obligation being assumed by the reorganized company; recited that the 1914 judgment had been set aside, and that the new agreement eliminated any requirement to maintain offices and shops at Palestine. The application further recited that the new agreement with Palestine was compatible and consistent with the public interest, was necessary or appropriate for or consistent with the proper performance by the railroad of its service to the public as a common carrier, would not impair its ability to perform that service, and was reasonably necessary and appropriate for such purpose, and requested the Commission to make all requisite findings in support thereof and grant all requisite authority for the consummation of the plan of reorganization. The Commission made the requested findings and approved the application. Petition For Leave To Intervene, pages 10-11. On March 1, 1956, a final

order was entered by the Bankruptcy Court, and the reorganized Missouri Pacific was at last in business, free of all of the Bankruptcy Act restraints under which it had operated since March 31, 1933, and of any obligation by judgment, statute or contract to maintain offices and shops at Palestine.

E. Evidence Before The I.C.C. And The Commission's Findings

At the time of the hearing, the Palestine Agreement obligated Missouri Pacific to employ 4.5% of its 7,842 employees in I.C.C. classifications I, II, IV, V, and VI(a) at Palestine, or 353 such employees, which could be made up out of any one or more of such employee classifications. Exhibit 11, Rodman.

In its Report in the instant proceeding dated May 4, 1976, the Commission approved the discussion, findings and conclusions of the Administrative Law Judge with respect to the Palestine Agreement. 348 I.C.C. at page 430. Among other things the Commission thus found:

> (1) At the time of the hearing, Missouri Pacific had its freight claims department, a diesel service facility and a freight car repair shop in Palestine. There were approximately 64 employees in the freight claims department, 222 in the car repair shop and 86 other employees • • • coming within I.C.C. Employee Classifications I, II, IV, V and VI(a) (which are the ones included within the 1954 Agreement) located at Palestine. 348 I.C.C. at page 437.
>
> (2) If Missouri Pacific is relieved of the obligations of the 1954 Agreement, then it wants to move this freight claims department to St. Louis. *There is nothing in the 1954 Agreement which prevents such removal.* Of these 64 freight claims department employees, 13 positions at Palestine and two in St. Louis would be eliminated and these employees would be assigned other

> work, except that employees with less seniority would lose their jobs. 348 I.C.C. at page 437. The railroad would save an estimated $240,238 per year by moving the freight claims department to St. Louis. 348 I.C.C. at page 443.
>
> (3) Missouri Pacific has no immediate plans to eliminate the car repair shops at Palestine. *It offered no testimony to show any monetary savings to be effected thereby.* Missouri Pacific concedes that *there is a need for such a shop facility in Texas* and that it would like to construct a new shop which would be modern in track layout, buildings and tooling. Of the 209 mechanical department employees at Palestine, relocation to a new shop located elsewhere in Texas would leave about 40 such employees at Palestine. The other 169 would have the opportunity to follow the work to the new shop location. There will always be some repair work done at Palestine because of the geography of the railroad. 348 I.C.C. at page 437. New shop facilities could not practically be built *in Palestine* because of the physical restraints of the surrounding town and the general topography in the area.[7] 348 I.C.C. 443. As noted, the same witness testified that there is no physical impediment to locating this new shop *elsewhere in Palestine or in the general area of Palestine,* and that the existing facilities there *are worth a number of millions of dollars.* 348 I.C.C. at page 437.

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[7] This is the sole basis for the footnote assertion at page 4 of the Petition to the effect that the shops "cannot be rebuilt" at their present location in Palestine. This contention was not asserted in the application or in the railroad's written testimony served before the hearing. It arose at the hearing as rebuttal to the testimony of the Railroad's witness, James W. Gessner, who lives in St. Louis, that there is no physical impediment to locating the new shop *elsewhere in Palestine or in the general vicinity of Palestine.* While there may not be sufficient space at the *present site* for an enlarged shop operation, the inference that there are not other suitable locations *in the general area* of Palestine near the Railroad's rights-of-way is simply not true. The City has offered to assist the Railroad in finding a suitable location.

(4) At the time of the hearing Missouri Pacific employed 372 agreement related employees at Palestine, that number being 19 more than the agreement requires. If all 64 freight claims employees and 169 mechanical department employees should be moved out of Palestine the annual loss in wages paid in Palestine would be $3,617,000. 348 I.C.C. at pages 437-438.[8]

THERE ARE NO VALID REASONS FOR GRANTING A WRIT

I. THE DECISION BELOW IS NOT CONTRARY TO, BUT IN KEEPING WITH, OTHER DECISIONS OF THIS COURT

The contention that the Circuit Court misconstrued Section 5(11) of the Interstate Commerce Act by taking the phrase "insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for * *" out of context, thereby limiting the power of the Commission to impose terms and conditions nullifying "state law restraints", is wholly without merit. Substantially the same contention was asserted in *Regents of the University System of Georgia* v. *Carroll*, 336 U.S. 586, 94 L.Ed. 363 (1950), but this Court held such a construction of a similar Act incorrect, saying:

> "One suggestion is that Petitioner's position has a specific statutory basis in § 303(r), which permits the Commission to prescribe such 'conditions' as are 'necessary to carry out the provisions' of the Act. We do not think the suggestion is sound. Congress has enabled the Commission to regulate the use of broadcast channels through a licensing power. It is in connection with this power that § 303(r) is to be interpreted.

[8]As noted above, Commissioner O'Neal's dissenting opinion states that abrogation of the contract "will greatly harm, if not devastate, the economy of Palestine, Tex." 348 I.C.C. at page 432.

> *The Commission may impose on an applicant conditions which it must meet before it will be granted a license, but the imposition of the conditions cannot directly affect the applicant's responsibilities to a third party dealing with the applicant.*
>
> "Petitioner also urges that a state court judgment should not be allowed to thwart the Commission's efforts to enforce the requirements of the Act. Since the Communications Act does not specifically empower the Commission to adjudicate the contractual liability of a licensee for its contracts or to declare a licensees' contracts unenforceable in the Courts, for this defense petitioner must depend upon general implications from the Act.
>
> "* * *
>
> 94 L.Ed. at pps. 374-375
>
> "* * * The Commission might refuse to issue a license until the applicant has demonstrated that it has been freed by the state courts from the obnoxious contract.
>
> "* * * Under the present statute, the Commission could make a choice only within the scope of its licensing power, i.e., to grant or deny the license on the basis of the situation of the applicant. It could insist that the applicant change its situation before it granted a license, *but it could not act as a bankruptcy court to change that situation for the applicant. * * * We do not read the Communications Act to give authority to the Commission to determine the validity of contracts between licensees and others.*"
>
> 94 L.Ed. at pages 375-376

See also *Stenger* v. *Stenger Broadcasting Corp.*, 28 F. Supp. 407 (D. Penna. 1939), and *Gulf, Mobile and Ohio R. Co.* v. *Illinois Central R. Co.* 225 F.2d 816 (5th Cir. 1955), cert. den., 350 U.S. 932, 100 L.Ed. 815, where the Court held the same principles apply to the Interstate Commerce Act, saying, at page 822:

> "Although the Regents case, supra, is not a railroad case, the reasoning of the Supreme Court in that case is quite apposite and is persuasive of the proposition that the licensing and regulatory powers granted to administrative bodies by Congress do not authorize the abrogation of or have the effect of abrogating, private contracts merely because such contracts may, to a considerable degree, affect the results sought to be accomplished by the act of regulation or licensing."

In the *New Haven Inclusion Cases*, 399 U.S. 392, 26 L.Ed. 2d 691 (1970) this Court observed that "Congress did not purport to transfer its legislative power to the unbounded discretion" of the Interstate Commerce Commission (26 L.Ed. p. 721). The framework of the Act is that carriers may freely contract without the consent or approval of the Commission unless the Act itself requires such approval or consent, and the Act confers no jurisdiction in the Commission *over contracts made by non-carriers* with a railroad. *United States* v. *Fruit Growers Express Co.*, 279 U.S. 363, 73 L.Ed. 739 (1929); *General American Tank Car Corp.* v. *El Dorado Terminal Co.*, 308 U.S. 422 84 L.Ed. 361 (1940), reh. den., 309 U.S. 694, 84 L.Ed. 1035.

The Commission's authority under Section 5 of the Act is limited to the approval or disapproval of *voluntary* mergers initiated by the carriers themselves. *St. Joe Paper Company* v. *Atlantic C.L.R. Co.*, 347 U.S. 298, 98 L. Ed. 710 (1954), reh. den., 347 U.S. 980, 98 L.Ed. 1118. Congress "left mergers of separate railroad properties into larger units to the will of their private owners, *merely lodging a veto power in the Commission*". (Frankfurter, J. in *Schwabacher* v. *United States*, 334 U.S. 182, 92 L.Ed. 1305 (1948), at page 1319). Under Section 5 the Commission may not require a non-willing carrier to merge. *Penn Central Merger & N. & W. Inclusion Cases*, 389 U.S. 486, 19 L.Ed.2d 723

(1968). It may not impose conditions with respect to "extrinsic matters" in such a proceeding, *United States* v. *Chicago, M. St. P. & P.R. Co.*, 282 U.S. 311, 75 L.Ed. 359 (1931), or impose conditions upon a party not involved in the merger. *Callaway* v. *Benton*, 336 U.S. 132, 93 L.Ed. 553 (1949). It does not have authority to alter a carrier's securities "just to promote the interest of the public or of investors generally in the stability or enhanced value, of railroad stock". *Wood* v. *United States*, 132 F.Supp. 586 (D. N.Y. 1955), at page 594.

Petitioner contends that the ICC is given the power of life or death over a railroad's contracts with non-carrier third parties by Section 5(11) of the Act which provides that "the authority conferred by this section shall be exclusive and plenary", and that "any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall have full power * * * to carry such transaction into effect and to own and operate any properties and exercise any control or franchises acquired through said transaction without invoking any approval under state authority"; and that such participating carriers "shall be and they are hereby relieved from the operation of the antitrust *laws* and of all other *restraints*, limitations and prohibitions *of law*, Federal, State, or municipal, *insofar as may be necessary to enable them to carry into effect the transaction so approved* or provided for in accordance with the terms and conditions, if any, imposed by the Commission * * *."

It is noteworthy that the words "contract" or "agreement" are not found in this paragraph at all. It speaks solely of *laws* and *restraints of law*. Moreover, as to these restraints, the paragraph is self-operative. It provides that the participating carriers "shall be and are hereby relieved"

of such laws and restraints of law. As the 5th Circuit Court held, the "restraints" referred to in paragraph 5(11) are only those which would either prevent the carrier from "carrying the transaction into effect" or would require "invoking an approval under the state authority". No such restraints are involved here. The merger is an accomplished fact, and was accomplished *pendente lite* in September, 1976, shortly after the stay order granted Rock Island by the 7th Circuit Court (as a part of its order transferring the Rock Island's Petition to Review the same order to the 5th Circuit) expired.

Without spelling out this fact (but with knowledge of it) the Court below correctly held that "the ICC's power only extends to setting aside state restraints to the effectuation of an approved Section 5(2) transaction and no further"; that "the agreement clearly is not an obstacle to the merger of T&P and C&EI and does not threaten the merger's success"; that "the ICC exceeds the scope of its authority when it voids contracts that are not germane to the success of the approved Section 5(2) transaction"; that "actions taken by the ICC in connection with these transactions but not necessary to them exceed the scope of its authority"; that "the Palestine Agreement has no role in the ICC's analysis of the proposed voluntary merger of MoPac, T&J, and C&EI"; that although the Administrative Law Judge and the ICC concluded that the Palestine Agreement was a burden on interstate commerce, "there is no indication that this burden presents any obstacle to the merger"; and that "despite the irrelevance of the Palestine Agreement to the merger, the ICC has gratutiously relieved MoPac of its contractual obligation."

Furthermore, there is an obvious distinction between *restraints of law imposed* by the Sovereign, and *contract*

restraints, voluntarily assumed by the carrier. "There is a distinction, says Blackstone, between a contract and a law". *Landon* v. *Town of Litchfield*, 11 Conn. 251, 266 (source: *Words and Phrases*, Vol. 24A, page 13); *Swift* v. *Tyson*, 41 U.S. (16 Pet.) 1, 10 L.Ed. 865, (1842); *McMurray* v. *Wright*, 73 P. 257, 261 (Colo. Ct. App. 1903); *Four Packages of Cut Diamonds* v. *United States*, 256 F. 305 (2nd Cir. 1919); *Contemporary Music Group, Inc.* v. *Chicago Park District*, 343 F.Supp. 505 (D. Ill. 1972). Even in *Texas* v. *United States*, 292 U.S. 522, 78 L.Ed. 1402 (1934), upon which Missouri Pacific relies, the Court noted that "contractual obligations" are distinguishable from "obligations imposed by statute". 78 L.Ed. at page 1410.

In the dissenting opinion of Mr. Justice Frankfurter in *Schwabacher* v. *United States*, 334 U.S. 182, 92 L. Ed. 1305 (1948), the powers conferred on the Commission under the Bankruptcy Act are compared with those conferred on the Commission by Section 5 of the Interstate Commerce Act. He states that Congress could have conferred coercive powers in the Commission by the latter act,

> *"But that is precisely what Congress has refused to do.* * * * It left mergers of separate railroad properties into larger units to the will of their private owners, *merely lodging a veto power in the Commission* if such voluntary mergers run counter to the defined public interest. * * *
>
> "The Commission was charged with seeing to it that *the very limited requirements of § 5(2) were observed,* and to that end was given 'exclusive and plenary' authority. § 5(11). *The purpose was to authorize a voluntary agreement not to formulate a plan and to coerce its adoption, as is true of § 77.* * * * The great difference between these requirements (§ 5) and the detailed and comprehensive provisions of § 77, 11 U.S.C.A. § 205, 3 F.C.A. title 11, § 205, carries a sharp legal contrast between the *authorization* which Congress required for

voluntary mergers *and* the *coercion* of an imposed plan of reorganization in the case of insolvent roads. * * *

"While § 5(11) relieves parties to an approved merger from the restraints of other laws 'Federal, State or Municipal', *it does so only 'insofar as may be necessary to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission . . .'*

"The considerations relevant to voluntary mergers sharply differ from those that control liquidations and reorganizations under § 77 of the Bankruptcy Act. * * * *A railroad in reorganization is administered by a bankruptcy court which has control of all its assets. The power of dealing with all claims is inevitably concentrated in that court.* * * * I fail to see that the effect (of such minority stockholders claims) on the Chesapeake & Ohio will be any different than that of negligence claims for the same amount. Every operating railroad is likely to have such claims outstanding against it at all times. *Their existence does not interfere with the consummation of a voluntary merger.* * * *"

92 L.Ed. at pages 1319, 1320

Unless the meaning of "restraints of laws" is stretched out of all proportion to its true meaning to include "restraints voluntarily assumed by a carrier by contract", then *Texas* v. *United States*, 292 U.S. 522, 78 L.Ed. 1402 (1934); *Schwabacher* v. *United States*, 334 U.S. 182, 92 L.Ed. 1305 (1948), and *Seaboard Airline R. Co.* v. *Daniel*, 333 U.S. 118, 92 L.Ed. 580 (1948), relied upon by Petitioner are not in point. Each of these cases related to the authority of the Commission to relieve a carrier from *statutory restraints* over which it had no control — *not contractual obligations voluntarily solicited and assumed*. If Congress had intended to give the Interstate Commerce Commission such powers, we submit it would have said so in so many words and

would not have disguised its intention to do so within the phrase "anti-trust laws and other restraints of law."

In its opinion in *Texas* v. *United States*, 292 U.S. 522, 78 L.Ed. 1402 (1934), this Court stated that the single point there in controversy was *the authority of the Commission* to approve a lease agreement *between two railroads* permitting the lessee to abandon or remove from the State the general offices and shops of the lessor railroad *when such provision of the lease was attacked as being in violation of these same Texas Office-Shops Statutes*. 78 L.Ed. at p. 1405. The court held that the Commission was empowered by Section 5 of the Interstate Commerce Act, upon making the required finding of undue burden on interstate commerce, to relieve the carrier of such *state statutory burdens;* but it also noted that "contractual obligations" are distinguishable from "obligations imposed by statute". 78 L.Ed. at page 1410. *Third party contractual rights were in no way involved.*

Seaboard Air Line R. Co. v. *Daniel*, 333 U.S. 118, 92 L.Ed 580 (1948) also involved the authority of the Interstate Commerce Commission to relieve a carrier from the burdens of *state constitutional and statutory provisions* which it found to unduly burden interstate commerce. This Court again held that the Commission had adequate power under Section 5 of the Act "to override *state laws* which may interfere with efficient and economical railroad operation". (92 L.Ed. 586). *Here again no third party contractual rights were in issue.*

Schwabacher v. *United States*, 334 U.S. 182, 92 L.Ed. 1305 (1948), decided by this court the same year is in similar vein. The Court stated that it was called upon to determine the effect of the *state law* in relation to a constitutional Act of Congress. The precise question at issue was

as to the rights of certain minority preferred stockholders to be paid dividends and the liquidation value they claimed for their stock which was in excess of the values found by the Commission (to which a majority of the stockholders had assented). The Court held that the Commission erred in holding it could not determine these minority stockholders' rights while at the same time, in effect, giving them full credit by the terms of the merger. It said:

> "Since the federal law clearly contemplates merger as a step in continuing the enterprise, it follows that what *Michigan law* might give these dissenters on a winding up or liquidation is irrelevant, except insofar as it may be reflected in current values for which they are entitled to an equivalent. It would be inconsistent to allow state law to apply a liquidation basis to what federal law designates as a basis for continued public service.
>
> 92 L.Ed. at p. 1316-17
>
> "• • •
>
> "We therefore hold that no rights alleged to have been granted to dissenting stockholders by *state law* provision concerning liquidation survive the merger agreement approved by the requisite number of stockholders and approved by the Commission as just and reasonable."
>
> 92 L.Ed. at p. 1317

This case is distinguishable on several grounds. It involved *state law*, not contracts. It involved *stockholders* directly involved in the merger, *not third parties*. And finally, Section 5(11) specifically addresses itself to such stockholders' rights and requires assent by a majority "unless a different vote is required under applicable state law". These specific provisions clearly prevail over any *state law* to the contrary. It is also significant that even stockholders' rights are protected in merger cases by the provisions of

the Act, § 5(11), which require the assent of a majority (or such different vote as may be required by applicable state law) of the stockholders to the proposed plan of merger before the Commission may act thereon.

In contrast to these cases which relate to *state law restraints*, is the case decided two years later by the Supreme Court, *Regents of the University System of Georgia* v. *Carroll*, 338 U.S. 586, 94 L.Ed. 363 (1950) mentioned above, which does relate to *contractual rights*.

In his Initial Decision, the Administrative Law Judge stated that "the Commission has on numerous occasions relieved carriers from the same Texas statutes and similar contractual obligations in proceedings under Section 5" citing only *St. Louis S.W. Ry. Co. of Texas Lease*, 290 I.C.C. 205 (1953) and *Kansas City Southern Ry. Co. Merger*, 254 I.C.C. 529 (1943).

Even if those cases represented a "settled construction" of the Act by the Commission, which they do not, if that construction is wrong it will not be followed. *Interstate Commerce Commission* v. *Dunn*, 166 F.2d 116 (5th Cir. 1948), at page 117.

But neither of the cases cited by the Commission is in point here. In the *Kansas City Southern* case, the Commission's Report states (254 I.C.C. at page 529):

> "No representations have been made by any state authority *and no objection to the transaction has been offered.*"

Thus, if any third party contract rights were involved, and none are mentioned in the Commission's Report, the affected parties raised no objection. Moreover, the Report indicates that the applicants sought relief from state statutes, not a contract:

"• • • Applicants contend that the merger cannot be consummated unless the Commission shall attach certain conditions designed to relieve the parent company of complying with certain laws of the State of Texas. • • • (254 I.C.C. at page 531).

"(Applicants) • • • assert that, unless we attach appropriate conditions in connection with our approval of the merger *to free the merged company from such burdensome state laws*, the merged company at some time in the future may be compelled to suffer substantial injury by reason of being forced to comply therewith. (254 I.C.C. at page 536).

"• • •

"Unless the requisite conditions are imposed, the Applicants are of the opinion that the merger will not be consummated." (254 I.C.C. at page 537).

The differences between the *St. Louis Southwestern Railway Company* case and this case are even more striking. While the Report and Order of the Commission in that case did mention a contract between the City of Tyler and a predecessor company dated May 8, 1880, whereby the Railroad agreed to establish and perpetually maintain in Tyler its machine shops and general offices, and did purport to relieve the railroad of the obligations of that contract, the Report also shows (290 I.C.C. at p. 212) that "*The City Commission of Tyler* and the two Chambers of Commerce in that city *urged approval of the proposed lease and of the conditions relieving the applicant from* the operation of the Texas laws previously described, including *the agreement with the City of Tyler,*" and that "No exceptions to the report proposed by the Examiner were filed". 290 I.C.C. at p. 205.

Thus, both parties to the City of Tyler agreement urged the Commission to change that contract by approving the

Lease between the railroad and its subsidiary which so provided. Merely approving a consensual agreement between the parties is a vastly different thing from nullifying an agreement between a railroad and non-consenting third parties. At the time of the I.C.C. hearing, Tyler wanted the old agreement superceded because the parent company, St. Louis Southwestern Railway Company, offered the City something much better. It proposed to move various departments and employees from *St. Louis to Tyler.*

Some 12 years later, in 1965, Tyler changed its mind. It filed a petition in a Texas District Court alleging that the railroad was moving its general offices and machine shops from Tyler in violation of the City's original agreement with the railroad and a 1906 state court judgment validating the agreement. The suit was removed to the United States District Court for the Eastern District of Texas, and the railroad also filed a separate suit in such Federal District Court for a declaratory judgment that the 1906 State Court judgment against it was void and unenforceable and enjoining further prosecution of the contempt proceedings in the State Court.

When the Federal Court remanded Tyler's suit in the Federal Court for declaratory and injunctive relief to the State Court, the railroad then filed an original proceeding in the Supreme Court of Texas in the form of a motion to vacate, modify or suspend the 1906 judgment. The Texas Supreme Court declined to take jurisdiction holding that jurisdiction to determine in the first instance whether a judgment rendered and entered by it as a court of review has become void or unenforceable because of changed conditions "lies with the trial court in which the case was pending when final judgment was entered." *City of Tyler*

v. *St. Louis Southwestern Railway Company of Texas*, 405 S.W.2d 330 (Tex. Sup. Ct. 1966) at page 332.

The railroad then tried its suit in the Federal District Court seeking a declaratory judgment that the Interstate Commerce Commission's order of December 18, 1953, authorizing the lease between the parent and its subsidiary (290 I.C.C. 205), superceded the state court judgment, and for an injunction against the City from further prosecution in the state court of its motion to require the railroad to show cause why it should not be held to be in contempt of the 1906 state court judgment. The federal District Court declined jurisdiction holding that "a Federal Court should abstain from entertaining any Federal declaratory judgment action when the questions involved * * * can just as well be tried in the state court as they could in the Federal Court" and that "the declaratory judgment remedy should not be invoked to determine the validity of a defense in a pending case in a state court." *St. Louis Southwestern Railway Co.* v. *City of Tyler, Texas*, 375 F.2d 938 at p. 942 (5th Cir. 1967).

In accordance with the Texas Supreme Court's holding, the railroad then filed a motion in the State District Court to vacate, modify or suspend the 1906 judgment. After hearing, such Court refused the railroad's motion, holding that the Interstate Commerce Commission's uncontested order approving the lease, which had by then been outstanding for some 14 years, was void insofar as it purported to authorize violation of the 1891 contract and the 1906 judgment. The railroad appealed that decision to the Texas Court of Civil Appeals and it is the opinion of that Court (*St. Louis Southwestern Ry. Co. of Texas* v. *City of Tyler*, 422 S.W.2d 780, Tex. Civ. App. 1967, writ ref. n.r.e.), which is relied upon by the Petitioner as an acknowledgment by a Texas court of the ICC's power to

nullify "state law restraints — such as the Palestine Agreement." (Petition, p. 21).

Such Texas intermediate appellate court did hold that the Interstate Commerce Commission "has the power under the Transportation Act of 1920 and amendments thereto to relieve railroads from the operation of private contracts" citing and quoting from *Texas* v. *United States* and similar authorities. As pointed out above, *Texas* v. *United States* related to obligations imposed by the state *statutes, not* consensual obligations arising from private *contracts.* Although the opinion in *Texas* v. *United States* also states that "even explicit charter provisions must yield to the paramount regulatory power of the Congress" and that "Congress might so exert its whole constitutional power in regulating interstate commerce as to render that agreement unenforceable, or to impair its value", the question here is whether Congress has done so with respect to private contractual agreements. While charter obligations imposed by state statutes and assumed by railroad as a *sine qua non* for the grant of a charter may or may not be within the purview of Section 5(11), certainly such obligations, legislatively imposed, are not in the same class with and are readily distinguishable from obligations voluntarily assumed in a private contract which the railroad was free to enter into or not at its own volition. At most, the cases cited by the Texas intermediate appellate court (the same cases cited in the Commission's Initial Decision) stand for the proposition that *Congress* has constitutional power under the Commerce Clause to grant Federal agencies the right to nullify private agreements. This is not authority for the position that Congress *did grant* such powers to the Interstate Commerce Commission when it provided that "carriers participating in a transaction approved or authorized under the provisions of this section shall be and they are relieved *from the operation of the*

antitrust laws and of all other restraints, limitations and prohibitions *of law,* Federal, State or municipal."

However, the Texas Court did not rest its decision on that ground alone. It also held that *by urging approval of the lease, including the provision nullifying the 1891 contract and the 1906 judgment, and by waiting some 12 to 15 years before* taking a contrary position, the City of Tyler was estopped from taking a new position, saying:

> "The lease was based upon a specific condition invalidating the contract upon which the injunction was based, and the City of Tyler which was the beneficiary under the contract and the injunction reaped benefits made possible by the approval of the lease by the Interstate Commerce Commission. *After a silence of more than a decade the city could not equitably challenge the order of the Interstate Commerce Commission and the Railroad's change of position and reliance thereon.*"
>
> 422 S.W.2d at page 786

Since these were the only two grounds set forth in the Texas Court's opinion for overruling the trial court's judgment in favor of the City, we submit that when the Texas Supreme Court refused the City's application for writ of error with the notation "Refused, No Reversible Error",[9] it obviously disapproved that part of the lower

[9] At page 21 of the Petition, Petitioner states that the Texas Supreme Court "refused" the application for a writ of error. This is incorrect. The action it took was "Refused, No Reversible Error". This distinction is quite important. Texas Rule of Civil Procedure 483 provides, in part, "In all cases where the judgment of the Court of Civil Appeals is a correct one and where the principles of law declared in the opinion of the court are correctly determined, the Supreme Court will refuse the application with the docket notation 'Refused.' In all cases where the Supreme Court is not satisfied that the opinion of the Court of Civil Appeals in all respects has correctly declared the law, but is of the opinion that the application presents no error which requires reversal, the Court will deny the application with the notation 'Refused. No Reversible Error.'

court's opinion which held that the Interstate Commerce Commission could nullify private contracts in a Section 5(2) proceeding, but nevertheless approved the result because of the Court's further holding that the City of Tyler was estopped, after urging the Commission to approve the lease, securing an order so providing, and receiving the benefits thereof, to take a contrary position more than 10 years later in another forum.

Section 5(11) of the Interstate Commerce Act has existed in substantially its present form for more than 35 years. It seems reasonable to assume that, in that time span, if the Commission has in fact exercised jurisdiction to nullify any contracts not requiring Commission approval when made, made by carriers with non-carrier parties, at least one such party would have objected and its objection would have been noted in the Commission's report and order. We submit that in truth and in fact there is no such case because no such jurisdiction has heretofore been asserted by the Commission.

II. THE DECISION OF THE COURT BELOW UNDER THE FACTS BEFORE IT CANNOT POSSIBLY HAVE ANY IMPACT ON THE DEVELOPMENT OF EFFICIENT AND ECONOMIC RAIL SYSTEMS

The case at hand is not that of a railroad struggling to meet operating costs, seeking a merger into or with another independent railroad which is burdened with an improvident contract, the performance of which would prevent or seriously affect the success of the merged operation. On the contrary, we have the case of a prosperous parent paying substantial dividends and prosperous subs paying substantial dividends, with the parent and its stockholders seeking to abrogate a contract of the parent (which it

sought, and considered highly advantageous when made) in a non-contested merger proceeding, the sole effect of the abrogation of which will be to increase the amount of profits available for paying dividends.

By an instrument called a "merger agreement" Missouri Pacific's stockholders declared themselves to be rid of their 1954 Agreement with Palestine, and sought to have this unilateral declaration legitimatized by the Commission in a non-contested proceeding to accomplish the "formal amalgamation" of that which has been true *de facto* for many years. As the Court said in *Breswick & Co.* v. *United States*, 134 F.Supp. 132 (D. N.Y. 1955):

> "What it [the Commission] did was to permit a merger of two carriers which were already controlled by a parent carrier . . .
>
> "• • •
>
> "The prayer for approval of the merger is treated as if it were an effective but meaningless incantation to propitiate a medicine man." 134 F.Supp. at page 143.

No public interest is served by the abrogation of this contract; only the interests of Missouri Pacific's stockholders in seeking to rid their Company of an agreement originally beneficial but no longer useful to it.

The court's comments in *Gulf, Mobile and Ohio R. Co.* v. *Illinois Central R. Co.*, 225 F.2d 816 (5th Cir. 1955), cert. den., 350 U.S. 932, 100 L.Ed. 815, seem highly pertinent here:

> "Notwithstanding appellant's effort to depict itself as being legally required constantly to seek out new plans and arrangements that might better serve the shipping and travelling public, we know of no rule of law that makes such duty paramount or superior to the duty to carry out its solemnly made contracts.
>
> "• • •

> "Appellant's attempt to clothe its own efforts to achieve a substantial financial saving for itself with the mantle of public duty of the kind that overrides the obligation of a contract, is not persuasive. We find nothing in the Interstate Commerce Act or any of the decided cases that supports any such theory."
>
> 225 F.2d at pages 823, 824

The Interstate Commerce Commission is not in business to nullify a railroad's improvident contracts. As this Court said more than fifty years ago in *Arkansas Natural Gas Company* v. *Arkansas Railroad Commission*, 261 U.S. 379, 67 L.Ed. 705 (1923), while the government has power to regulate public utilities notwithstanding the effect may be to abrogate private contracts, "there is, quite clearly, no principal which imposes an obligation to do so merely to relieve a contracting party from the burdens of an improvident undertaking." • • • The power to do so does not exist *per se*. It is the intervention of the public interest which justifies, and at the same time, conditions, its exercise." 67 L.Ed. at page 710.

More recently, in *Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U.S. 348, 100 L.Ed. 388 (1956), the Court applied the same principles to a federal administrative order. There the Federal Power Commission's order purported to set aside a contract rate where it yielded only a 2.6% return and to establish a new rate which would yield a 4.75% return. The Court held that the FPC had acted upon "an erroneous standard," saying:

> "But while it may be that the Commission may not normally impose upon a public utility a rate which would produce less than a fair return, it does not follow that a public utility may not by itself agree by contract to a rate affording less than a fair return or that, if it does so, it is entitled to be relieved of its

improvident bargain * * *. That the purpose of the power given the Commission by § 206(a) is the protection of the public interest, as distinguished from the private interests of the utilities, is evidenced by the recital in § 201 of the Act that the scheme of regulation imposed 'is necessary in the public interest'."

100 L.Ed. at page 395

As Commissioner O'Neal observed in his dissenting opinion "there is no overriding public policy reason for abrogating the contract, even if we make the doubtful assumption that the Commission could do so in this case. * * * *Abrogation in this case serves no public purpose, only the private purposes of the railroad.*" 348 I.C.C. at page 432.

The public interest would more likely be served by requiring performance of the contract. By Section 5(2)(f) of the Act Congress has decreed its policy to be that such mergers shall "not result in employees of the carrier . . . being in a worse position with respect to their employment." The employees at Palestine would be in a worse position if their jobs were moved elsewhere, and they wish to remain at Palestine where their homes are, their children are in school, and they have fixed roots. In *Railroad Telegraphers* v. *Chicago & N.W. R. Co.*, 362 U.S. 330, 4 L.Ed.2d 774 (1960), where the railroad, over the protest of the affected railroad employees, sought authority to shut down a great many of its local stations, this Court pointed out that "fair terms and conditions of railroad employment are essential to a well-functioning national transportation system" and that while increased wages and better working conditions might sometimes increase the expense of railroad operations, "it goes without saying * * * that added expenditures for employees cannot always be classified as 'wasteful'." 4 L.Ed.2d at page 783.

To say the least, the Railroad's motives are suspect. Although it says it wants to eliminate an estimated 15

jobs in the freight claims department by transferring 64 employees to St. Louis and thereby "save" an estimated $240,000, the record shows that at the time of the hearing it employed some 19 more employees at Palestine than the Agreement required, which represents a payroll expenditure of some $200,000 per year. Moreover, the estimated saving of $240,000 per year is more than overbalanced by the economic loss to Palestine of a $3,000,000-$4,000,000 per year payroll, the forcible uprooting of more than 200 unwilling employees from their homes in Palestine to other places, and the massive economic waste involved in the abandonment by Missouri Pacific of its facilities now at Palestine which it states are worth "a number of millions of dollars".

At the time of the hearing the 1954 Agreement required Missouri Pacific to employ 4.5% (or 353) of its 7,842 employees in I.C.C. Classifications I, II, IV, V and VI(a) at Palestine. Now, with the merger of T&P and C & EI into Missouri Pacific, a lesser percentage will apply, in that the Agreement provides that in the event of the merger or consolidation of the Missouri Pacific with other railroads, a new percentage is to be calculated for the consolidated corporation based on the number of employees within the affected I.C.C. employee classifications on the payrolls of the affected lines over the five year period immediately preceding the merger. Thus, the actual number of employees required to be stationed at Palestine after the merger will depend entirely upon the number of such employees of the Missouri Pacific, T&P and C. & E.I. during such five year period. If the five year average differs substantially from the number now employed, the number required at Palestine after the merger will likewise differ substantially. Since the railroad failed to offer these numbers so that the new Palestine percentage could be calcu-

lated and applied, it seems proper to assume that such proof would have been adverse to it and perhaps have shown that the actual number required at Palestine after the merger would have been less than the number required at the time of the hearing. In any event, it was incumbent upon the railroad, as a minimum, to show the effect of operating under the contract as merged and this it did not do.

III. THE DECISION BELOW IS NOT CONTRARY TO DECISIONS OF OTHER COURTS OF APPEALS CONSTRUING THE COMMISSION'S AUTHORITY UNDER SECTIONS 5(2) AND 5(11) OF THE INTERSTATE COMMERCE ACT

None of the three cases cited by Petitioner in this part of its Petition (pages 18-20, inclusive) are in point with regard to the facts of this case in that each relates to a federal or state *legislative restraint of law* — not a contractual obligation voluntarily assumed by the carrier.

A case which is in point, and which did relate to the ICC's power to alter contractual obligations is *Texas & New Orleans Railroad Co.* v. *Brotherhood of Railroad Trainmen*, 307 F.2d 151 (1962), cert. den., 371 U.S. 952, 9 L.Ed. 2d 500.

WHEREFORE, PREMISES CONSIDERED, Respondents pray that the Court deny issuance of the writ of certiorari requested in the Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Brief was served on all parties to the proceeding in the Court below on the ..... day of March, 1978, in accordance with the rules.

.....
James D. Smullen

APPENDIX

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Finance Docket
No. 2773, 2774

Joint Application of

MISSOURI PACIFIC RAILROAD COMPANY, THE TEXAS AND PACIFIC RAILWAY COMPANY, and CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY.

(1) Under Section 5(2) of the Interstate Commerce Act for an Order Authorizing (a) the Merger of the Properties and Franchises of The Texas and Pacific Railway Company, and the Chicago & Eastern Illinois Railroad Company with and into the Missouri Pacific Railroad Company, (b) the Acquisition by Missouri Pacific Railroad Company, through Ownership of Stock, of Sole or Joint Control of Carriers Subsidiary to or Affiliated with The Texas and Pacific Railway Company, and the Chicago & Eastern Railroad Company;

(2) Under Section 20a of the Interstate Commerce Act for an Order Authorizing the Surviving Corporation Resulting from such Merger, i.e., Missouri Pacific Railroad Company, to Issue Common Stock and to Assume Liability in Respect of Securities to the Extent to which any other Applicant is Liable as Obligor or Guarantor Thereof; and

[2]

(1) Under Section 5(2) of the Interstate Commerce Act for an order authorizing (a) the merger of the properties and franchises of The Texas and Pacific Railway Company, and the Chicago & Eastern Illinois Railroad Company, with

and into the Missouri Pacific Railroad Company, and (b) the acquisition by Missouri Pacific Railroad Company through ownership of stock, of sole or joint control of carriers subsidiary to or affiliated with The Texas and Pacific Railway Company, and the Chicago & Eastern Illinois Railroad Company; and

(2) Under Section 20a of the Interstate Commerce Act for an order authorizing the surviving corporation resulting from such merger i.e., Missouri Pacific Railroad Company (MoPac), to issue Common Stock and to assume liability in respect of securities to the extent to which any other Applicant is liable as obligor or guarantor thereon.

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[10]

(b) (7) Missouri Pacific Railroad Company controls The Texas and Pacific Railway Company through direct ownership of 96.7% of its outstanding capital stock, and controls the Chicago & Eastern Illinois Railroad Company through direct ownership of 78.3% of its outstanding capital stock.

[11]

Mississippi River Corporation controls Missouri Pacific Railroad Company through direct ownership of 7,811,975 shares of the latter's capital stock, which holding represents 63.6% of the MoPac's Common Stock, 62.1% of MoPac's Preferred Stock and 62.5% of all outstanding MoPac stock.

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[16]

(c) (2) The Merger is to be effected under authority of Section 5 of the Interstate Commerce Act, as amended,

pursuant to the terms of an Agreement and Plan of Merger (hereinafter sometimes called the "Agreement") entered into by and between the Applicants and dated as of the 29th day of July, 1974. A copy of said Agreement is attached hereto as Appendix A to Exhibit 16 (Part I), the Proxy Statement for the meetings of Applicants' Stockholders.

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The Commission has, in previous proceedings involving other railroads, dealt with the restrictions and requirements arising under the Constitution and Statutes of the State of Texas relating to operations of railroads within the State of Texas, including contractual obligations arising therefrom.

[17]

The Constitutional provisions previously considered by the Commission, specifically Sections 3 and 6 of Article 10, required that every railroad doing business in the State shall maintain a public office for the transfer of stock and the inspection of books and records; that directors thereof shall hold annual meetings in Texas; and that no Texas railroad shall consolidate with a railroad company organized under the laws of another state. These provisions were repealed by the voters at an election held August 5, 1969.

There, however, remains on the statute book of the State of Texas a number of articles, specifically Articles 6260, 6275 to 6281, inclusive, 6286 and 6310 of Vernon's Annotated Civil Statutes of Texas, which provide: That no corporation, except one chartered in Texas, shall be permitted to construct, build, operate, acquire, own, or maintain a

railway within the State; that every railroad company chartered by the State, or owning or operating any line of railway within the State, shall keep and maintain permanently its general offices within the State; that every railroad operating in Texas shall keep its machine shops and roundhouses at such place as it has contracted to keep them; that every railroad operating in Texas shall maintain at the place in Texas where its general offices are located, or elsewhere in Texas with the permission of the Railroad Commission of Texas, the offices of its president or vice president, secretary, treasurer, local treasurer, auditor, general freight agents, traffic manager, general manager, general superintendent, general passenger and ticket agent, chief engineer, superintendent of motive power and machinery, master mechanic, master of transportation, fuel agent and general claim agent, and that each such officer must reside at the place where his offices are kept; that railroads operating in and having repair shops in Texas must perform in Texas the repair on all rolling stock owned or leased when such equipment is in Texas; that the principal business of the railroad corporation must be conducted and claims for damages settled and adjusted at the general offices located in Texas; that every railroad corporation doing business in Texas shall maintain a public office for the transaction of its business and the transfer of its stock, at which point there must be kept books in which shall be recorded certain information relating to capital stock, the assets and liabilities of the corporation and the names and addresses of its officers; that directors and stockholders thereof hold annual meetings in Texas; that the location of the general offices, machine shops and roundhouses may not be changed without the consent of the Railroad Commission of Texas; and that a penalty of $5,000.00 will prevail for each day that a railroad violates any of such statutory provisions.

These statutes by their terms may be applicable not only to Texas corporations but also to foreign corporations doing a railroad business in Texas. While the Applicants believe that the maintenance of certain offices and facilities in the State of Texas will be in the best interests of the surviving MoPac, they also believe that it would be an intolerable burden on the resulting system for any or all of the specific offices and facilities enumerated in the Texas statutes to be required to be maintained by MoPac in Texas or at any specific location in that State, and for MoPac otherwise to have to comply with the requirements of the

[18]

Texas laws or any contract or agreement relating thereto or any judgment or decree of any Court arising therefrom or in connection therewith. To be required now to move offices and facilities which are outside Texas into Texas, or to maintain in Texas or at any point therein, offices or personnel, would be costly and wasteful and unduly interfere with the flexibility which the System needs to meet changes in operating, traffic and economic conditions as they arise, and to effect the benefits contemplated by the proposed merger. If the State laws, and any contracts which have been entered into in accordance with such laws and any judgments or decrees with respect thereto, were to be applicable to the surviving MoPac they would hinder efficient operations and service and impose undue burdens on the resulting System and on interstate commerce. Necessity for compliance therewith by MoPac would not, therefore, be consistent with the public interest but would constitute an unreasonable burden on interstate commerce.

Accordingly, Article VIII of the Agreement and Plan of Merger has been drawn specifically to negative the applica-

tion of the restraints of the type aforesaid imposed by the provisions of laws of any state or contracts with any counties or municipalities, and any judgments or decrees with respect thereto, and the Applicants request the Commission specifically to approve such provisions and, accordingly to subject its approval of the transaction herein proposed to conditions similar to those which it prescribed in connection with the merger of the Texarkana & Fort Smith Railway Company into the Kansas City Southern Railway Company, 254 I.C.C. 529 (1943), and again in connection with the lease by the St. Louis Southwestern Railway Company of Texas, 290 I.C.C. 205 (1953).

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[22]

The Applicants, together with their respective subsidiaries, have been and are now operated as a system with many common officers as shown hereinabove under the answer to (b) (11) above. Over the years, and to the extent possible in light of the essentially end-to-end character of the applicant railroads, many coordinations of facilities and functions and pooling of equipment have been put into effect between them, with the result that many of the economies ordinarily to be expected in a merger of railroads have in this instance already been effected. Nevertheless, as is stated aforesaid, there are many economies and simplifications which can still be made as a part of complete corporate amalgamation.

• • • • •

Because, as stated aforesaid, many of the usual coordinations and economies found in mergers have already been effected by the Applicants, it is anticipated that the displacement of employees will be at the very minimum, and that the principal effect, if any, will result from the transfer of positions and not so much from their elimination.

• • • • •

[23]

Since the Applicants are already part of a system, the formal amalgamation of their properties for common ownership can have no adverse effect on other railroads.

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[31]

PRAYER

WHEREFORE, the Applicants pray that the Interstate Commerce Commission issue an order herein: (1) under Section 5 (2) of the Interstate Commerce Act authorizing the Applicants, The Texas and Pacific Railway Company and the

[32]

Chicago & Eastern Illinois Railroad Company to merge their franchises and properties, including property interests held under lease and contract, with and into the Applicant, Missouri Pacific Railroad Company, for ownership, management and operations in accordance with the terms and conditions as set forth in the Agreement and Plan of Merger and as requested in paragraphs (c) and (d) of Part I of this Application, and authorizing the acquisition by Missouri Pacific Railroad Company, through stock ownership, of sole or joint control of carriers subsidiary to or affiliated with The Texas and Pacific Railroad Company

and the Chicago & Eastern Illinois Railroad Company; and (2) under Section 20a of the Interstate Commerce Act authorizing the Missouri Pacific Railroad Company to issue shares of its capital stock and to assume liability of the other Applicants in respect of securities as set forth herein in the manner and for the consideration, uses and purposes set forth herein.

Respectfully submitted,

MISSOURI PACIFIC RAILROAD COMPANY

By J. H. Lloyd
President

THE TEXAS AND PACIFIC RAILWAY COMPANY

By J. H. Lloyd
President

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

By J. H. Lloyd
President

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EXHIBIT 9

MISSOURI PACIFIC RAILROAD COMPANY

INCOME ACCOUNT

	Year 1969	Year 1970	Year 1971	Year 1972	Year 1973	January 1 to August 31, 1974
		• • • •	• • •	• • •	• • •	• • •
Net Income	$12,960,547	$12,376,854	$ 7,882,973	$10,936,412	$21,538,889	$32,587,400

RETAINED INCOME — UNAPPROPRIATED

	December 31, 1969	December 31, 1970	December 31, 1971	December 31, 1972	December 31, 1973	August 31, 1974
		• • • •	• • •	• • •	• • •	• • •
Dividends	9,513,134	9,515,665	9,517,665	9,518,915	10,123,130	9,539,166
		• • • •	• • •	• • •	• • •	• • •

THE TEXAS AND PACIFIC RAILWAY COMPANY

INCOME ACCOUNT

	Year 1969	Year 1970	Year 1971	Year 1972	Year 1973	January 1 to August 31, 1974
	•	•	•	•	•	
Net Income	$ 5,779,079	$ 5,458,409	$ 2,573,868	$ 4,017,383	$ 8,355,430	$ 6,146,819

RETAINED INCOME — UNAPPROPRIATED

	December 31, 1969	December 31, 1970	December 31, 1971	December 31, 1972	December 31, 1973	August 31, 1974
	•	•	•	•	•	
Dividends	2,444,440	3,911,104	2,442,705	2,564,402	2,693,995	2,693,995
	•	•	•	•	•	

A-10

EXHIBIT 9a

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

INCOME ACCOUNT

	Year 1969	Year 1970	Year 1971	Year 1972	Year 1973	January 1 to August 31, 1974
	•	•	•	•	•	
Net Income	$(2,183,541)	$ 395,207	$ 710,283	$ 2,663,395	$ 5,200,475	$ 5,306,512

RETAINED INCOME — UNAPPROPRIATED

	December 31, 1969	December 31, 1970	December 31, 1971	December 31, 1972	December 31, 1973	August 31, 1974
	•	•	•	•	•	•
Dividends				$ 337,232	$ 876,802	$ 843,079
	•	•	•	•	•	•

A-11

EXHIBIT 9b

MISSOURI PACIFIC RAILROAD COMPANY

PRO FORMA INCOME ACCOUNT FOR JANUARY 1 THROUGH AUGUST 31, 1974 GIVING EFFECT TO MERGER

	Missouri Pacific	Texas and Pacific	Chicago & Eastern Illinois	Combined	Adjustments	Note Ref.	Pro-Forma
Net Income	$32,587,400	$ 6,146,819	$ 5,306,512	$44,040,731	$(3,265,688)		$40,775,043

PRO FORMA RETAINED INCOME — UNAPPROPRIATED FOR THE PERIOD JANUARY 1, 1974 THROUGH AUGUST 31, 1974 GIVING EFFECT TO MERGER

	Missouri Pacific	Texas and Pacific	Chicago & Eastern Illinois	Combined	Adjustments	Note Ref.	Pro-Forma
Dividends	9,539,166	2,693,995	843,079	13,076,240	(3,265,688)	(G)	9,810,552

EXHIBIT 9c

I.C.C. FINANCE DOCKETS Nos. 27773 and 27774

EXHIBIT No. 10

PALESTINE AGREEMENT

Between

GUY A. THOMPSON, Trustee,

INTERNATIONAL-GREAT NORTHERN RAILROAD COMPANY, Debtor

and

THE CITY OF PALESTINE, TEXAS,

and

ANDERSON COUNTY, TEXAS.

EXHIBIT "C"

Dated December 21, 1954

[2]

THE STATE OF TEXAS
COUNTY OF ANDERSON

THIS AGREEMENT, made and entered into by and between GUY A. THOMPSON, in his capacity as Trustee (and herein sometimes referred to as "the Trustee") of International-Great Northern Railroad Company, one of the Debtors in Cause No. 6935, pending in the District Court of United States, Eastern Division, Eastern Judicial District of Missouri, and for and in behalf of such Railroad, pursuant to the express authorization of said Court by its Order No. 4443, on the one hand; and the City of Palestine, Texas, a municipal corporation (herein sometimes referred to as "Palestine" or "the City") acting herein by and through its Mayor, Robert H. Pickel, Jr., duly authorized by the City Council of Palestine; and Anderson County, Texas, a political subdivision of the State of Texas (herein sometimes referred to as "Anderson County" or "the County"), acting herein by and through Franklin C. Williams, its County Judge, duly authorized by the County Commissioners' Court of Anderson County, Texas; and certain citizens of Palestine and Anderson County and of the State of Texas who are signatories hereto and who act as representatives of a class composed of all of the citizens thereof having any interest in the the matters which are involved in this Agreement; on the other hand;

WITNESSETH:

I.

As used herein, the following terms shall, unless herein expressly provided otherwise, have the following meanings:

"Missouri Pacific Lines" shall mean the following railroad companies and their respective subsidiaries hereinafter named, to-wit:

[3]

(1) *Missouri Pacific Railway Company* and the following of its subsidiaries, viz.: Boonville, St. Louis & Southern Railway Company; Cairo & Thebes Railroad Company; The Chester & Mount Vernon Railroad Company; Fort Smith Suburban Railway Company; Marion & Eastern Railroad Company; Missouri Pacific Railroad Corporation in Nebraska; and Natchez & Southern Railway Company; such railroads being herein sometimes collectively referred to as "Missouri Pacific";

(2) *New Orleans, Texas and Mexico Railway Company* (herein sometimes called "New Orleans"), and the following of its subsidiaries, viz.: Asherton & Gulf Railway Company; Asphalt Belt Railway Company; The Beaumont, Sour Lake & Western Railway Company; Houston and Brazos Valley Railway Company; Houston North Shore Railway Company; Iberia, St. Mary & Eastern Railroad Company; New Iberia & Northern Railroad Company; Orange & Northwestern Railroad Company; Rio Grande City Railway Company; The St. Louis, Brownsville & Mexico Railway Company; San Antonio Southern Railway Company; San Antonio, Uvalde & Gulf Railroad Company; San Benito & Rio Grande Valley Railway Company; Sugarland Railway Company; (New Orleans and such subsidiaries being herein sometimes referred to collectively as "Gulf Coast Lines"); and

(3) *International-Great Northern Railroad Company* and its subsidiary, Austin Dam & Suburban Railway Company, which railroads are herein sometimes collectively referred to as "International" or the "RAILROAD".

"Reorganization Proceedings" shall mean the proceedings now pending before the Interstate Commerce Commission docketed as Finance Docket 9918, and styled, "Missouri Pacific Railroad Company Reorganization", and the same proceedings now pending in the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri, Docket No. 6935, styled, "In the Matter of Missouri Pacific Railroad Company, et al, Debtors"; and "Reorganization Court" shall mean such last mentioned Court in which the Reorganization Proceedings are pending.

"Office and Shop Employees" shall mean those railroad officers and employees whose jobs are properly classified and reportable under any of the following (and no other) Interstate Commerce Commission classifications, to-wit:

(901) I Executives, Officials and Staff Assistants;
(902) II Professional, Clerical and General;
(904) IV Maintenance of Equipment and Stores;
(905) V Transportation (other than Train, Engine and Yard);
(906) VI(a) Transportation (Yardmaster, Switch Tenders, and Hostlers);

in accordance with the "Rules Governing the Classification of Railroad Employees and Reports of their Service and Compensation" prescribed by the Interstate Commerce Commission by its order dated October 19, 1950, effective January 1, 1951, as the same may be amended from time to time, in which latter events any new classifications of the same or similar jobs shall apply.

"1914 Judgment" means the judgment of the District Court of Cherokee County, Texas, entered January 17, 1914, in Cause No. 6415, styled "Anderson County, et al, v.

International & Great Northern Railway Company" (such judgment being recorded in District Court Minute Book "M", page 191, in the Office of the District Clerk, Cherokee County, Texas), as affirmed by the Court of Civil Appeals for the Sixth Supreme Judicial District of Texas, on January 7, 1915 (rehearing denied February 11, 1915), and as finally affirmed by the Supreme Court of the United States on April 15, 1918 (rehearing denied June 3, 1918) after denial of an Application for Writ of Error by the Supreme Court of Texas on April 5, 1916, which provides in part as follows:

> "It is considered, ordered, adjudged and decreed by the Court, that the defendant, International and Great Northern Railway Company, shall forever keep and maintain the general offices, machine shops and roundhouses for the operation of the International and Great

[4]

Northern Railroad in the City of Palestine, in the County of Anderson, in the State of Texas, where the Houston and Great Northern Railroad Company and the International and Great Northern Railroad Company have contracted and agreed to forever keep same, for valuable consideration received.

"It is also considered, ordered, adjudged and decreed by the court that the defendant, International and Great Northern Railway Company be, and it is hereby, perpetually enjoined and restrained from changing the location of the machine shops and roundhouses of the International and Great Northern Railroad as operated by defendant, from the City of Palestine and that the defendant, International and Great Northern Railway Company, be, and it is hereby perpetually enjoined and restrained from keeping or maintaining the general offices of the Vice President

and General Manager, Secretary, Treasurer, Auditor, General Freight Agent, Traffic Manager, General Superintendent, General Passenger Agent, Chief Engineer, Master of Transportation, Fuel Agent, General Claim Agent, Superintendent of Motive Power and Machinery, and Master Mechanic, engaged in the operation of the International and Great Northern Railroad, at any other place than the City of Palestine."

II.

In consideration of the mutual benefits hereof and the other considerations hereinafter mentioned, the parties hereto have AGREED and do hereby AGREE as follows, to-wit:

1. This Agreement shall supersede any prior agreement between the RAILROAD and its predecessors in title, or any of them, on the one hand, and Palestine and Anderson County, and the citizens of Palestine, Anderson County, and the State of Texas, or any of them, on the other hand, regarding the maintenance of general offices, machine shops, and roundhouses at Palestine, Texas, and, as hereinafter provided, the parties hereto shall promptly move the District Court of Cherokee County, Texas, to set aside the 1914 Judgment and to enter a new judgment in accordance with the terms and provisions of this Agreement to take the place of the 1914 Judgment. Said new judgment shall be in substantially the form of the judgment attached hereto as Exhibit "B" hereof.

2. A. Subject to the ensuing terms and provisions hereof, as long as the RAILROAD or any successor in interest or assign thereof shall remain in the railroad business, the RAILROAD shall, each calendar year, actually employ or cause to be employed at Palestine, Texas, during that year, a number of Office and Shop Employees which shall be not less than:

(a) 39.4% of the average number of Office and Shop Employees employed by International at all points for the same year;

and (except as may be otherwise provided herein) which shall be

[5]

not less than:

(b) 20.5% of the total of the average number of Office and Shop Employees employed by International and Gulf Coast Lines, combined, at all points for the same year; and this percentage shall also apply (and then will take the place of the percentages set out in (a) above and in (c) below) in the event International shall ever merge, combine or consolidate solely with the Gulf Coast Lines into one corporation;

and (except as may be otherwise provided herein) which shall be not less than:

(c) 5.1% of the total of the average number of Office and Shop Employees employed by International and Missouri Pacific, combined, at all points for the same year; and this percentage shall also apply (and then will take the place of those set out in (a) and (b) above) in the event International shall ever merge, combine, or consolidate solely with Missouri Pacific into one corporation;

and (except as may be otherwise provided herein) which shall be not less than:

(d) 4.5% of the total of the average number of Office and Shop Employees employed by International and all of the remaining Missouri Pacific Lines, combined, at all points for the same year; and this percentage shall also apply (and then will take the place of the percentages set out in (b) and (c) above) in the event that Gulf Coast Lines and Missouri Pacific shall

merge, combine, or consolidate into one corporation; and this percentage shall also apply (and then exclusively, and in place of the percentages set out in (a), (b) and (c) above), in the event International, Gulf Coast Lines, and Missouri Pacific shall ever merge, combine, or consolidate with each other into one corporation;

and the reference to each railroad in (a), (b), (c) and (d) above shall include its successors and assigns to the extent of the operation of the railroad referred to. The provisions of this part 2.A. and part 2.C. of this Section II are subject to the following express conditions, viz.: (1) If International as reorganized shall emerge from the Reorganization Proceedings as a separate corporation which is not a subsidiary of, and does not have as a subsidiary, any of the other Missouri Pacific Lines (including any successor or successors thereof) and which is in fact independent of any ownership or control (whether by reason of a common ownership of stock or otherwise) by, and does not itself own or control any of the other Missouri Pacific Lines (including the successor or successors thereof) or any subsidiary thereof, then subparagraphs (b), (c) and (d) above shall have no application so long (and only so long) as International shall operate as such an independent railroad; (2) If International as reorganized shall emerge from the Reorganization Proceedings merged with Gulf Coast Lines into one corporation which is not a subsidiary of, and does not have as a subsidiary, any of the other Missouri Pacific Lines (including the successor or

[6]

successors thereof) and which is in fact independent of any ownership or control (whether by reason of a common ownership of stock or otherwise) by, and does not itself own or control, any of the other Missouri Pacific Lines (including the successor or successors thereof) or any subsidiary thereof, then (as provided in subparagraph (b) above) subparagraphs (a) and (c) above shall no longer apply, and it is further agreed, neither shall subparagraph (d) above have any application so long (and only so long) as such merger of International and Gulf Coast Lines shall operate as such an independent railroad; (3) If International as reorganized shall emerge from the Reorganization Proceedings merged with Missouri Pacific into one corporation which is not a subsidiary of, and does not have as a subsidiary, any of the other Missouri Pacific Lines (including the successor or successors thereof) and which is in fact independent of any ownership or control (whether by reason of a common ownership of stock or otherwise) by, and does not itself own or control any of the other Missouri Pacific Lines (including the successor or successors thereof) or any subsidiary thereof, then (as provided in subparagraph (c) above) subparagraphs (a) and (b) above shall no longer apply and, it is further agreed, neither shall subparagraph (d) above have any application so long (and only so long) as such merger of International and Missouri Pacific shall operate as such an independent railroad; and (4) Subject to the three (3) preceding conditions, if any of the Missouri Pacific Lines (including the successor or successors thereof except a successor constituting a merger with International) other than International or its successor shall emerge from the Reorganization Proceedings as a separate corporation which is not a subsidiary of, and does not have as a subsidiary, any of the other Missouri Pacific Lines (including the successor or successors thereof) and which is in fact independent of any ownership or control (whether by reason of a common ownership of stock or otherwise) by, and does not itself own or control any of the other Missouri Pacific Lines (including the suc-

cessor or successors thereof) or any subsidiary thereof, then the Office and Shop Employees of such railroad shall be excluded from any calculation of percentages provided for in this part 2.A. and in part 2.C. of this Section II of this Agreement so long (and only so long) as such railroad shall operate as such an independent railroad. Subject to the foregoing it is further provided that in the event that: (i) International (or its successor) or any of the other Missouri Pacific Lines (including the successor or successors thereof) shall ever merge, combine or consolidate with any of the other Missouri Pacific Lines, or with any other railroad or railroads; and (ii) if subsections (b), (c) and (d) above, or any of them, do not expressly apply thereto, then the percentages set out in (a), (b), (c) and (d) above, or the one or more of them which would be affected thereby, shall be recalculated and redetermined by multiplying each percentage so affected by a fraction, the numerator of which is the average annual number of Office and Shop Employees employed by the railroad or railroads, in question (i.e., other than the railroad or railroads with which the merger, combination, or consolidation is made) during the five (5) years immediately preceding the year in which the merger, combination, or consolidation occurs, and the denominator of which is a sum equal to the numerator plus the average annual number of Office and Shop Employees employed by the railroad or railroads with which the merger, combination, or consolidation is made during the same five (5) year period; and thereafter beginning the effective date

[7]

of such merger, combination, or consolidation, the percentage or percentages obtained as the product or products of such multiplication shall be applied (in so far as the merged,

combined, or consolidated railroad is concerned) until a new or different merger, combination, or consolidation is made, in which event there shall be another recalculation and redetermination under the provisions hereof. By way of example and not by way of limitation, the following hypothetical illustrations are given: If there should be a merger of International with The St. Louis, Brownsville and Mexico Railway Company, and if the five (5) year averages of Office and Shop Employees should be 2,000 for International and 1,000 for The St. Louis, Brownsville and Mexico Railway Company, then the 39.4% set out in subparagraph (a) above would be multiplied by 2/3rds, and thus reduced to 26.3%. Likewise, if Missouri Pacific Lines, or their successor, should merge with Railroad "X" (not now a part of Missouri Pacific Lines), and if the five (5) year averages of Office and Shop Employees should be 18,000 for Missouri Pacific Lines and 36,000 for Railroad "X", then the 4.5% set out in subparagraph (d) above would be multiplied by 1/3rd, and thus be reduced to 1.5%. In order to illustrate the manner in which the agreed percentages set out in (a), (b), (c) and (d) above were determined there is attached hereto and made a part hereof as Exhibit "A", a schedule prepared by the RAILROAD showing the number of Office and Shop Employees at Palestine and total International (shown as "I-GN Railroad") and total International and Gulf Coast Lines combined (shown as "I-GN plus G.C.L.") and total Missouri Pacific plus International (shown as "MoPac. plus I-GN") and total Missouri Pacific Lines (shown as "Missouri Pacific Lines") for the years 1924-53, inclusive, and for the first six (6) months of 1954.

2.B. It is further agreed that the total payroll of Office and Shop Employees at Palestine for any calendar year shall never be less than the product of the minimum num-

ber of Office and Shop Employees required to be employed by the RAILROAD at Palestine for that year under the applicable provisions of parts 2.A. or 2.C. hereof multiplied by the average per capita compensation of all of the Office and Shop Employees used under parts 2.A. or 2.C., as the case may be, in determining the minimum number of Office and Shop Employees required to be employed at Palestine for the year.

2.C. The RAILROAD shall maintain at Palestine, Texas, the number and payroll of Office and Shop Employees required by parts 2.A. and 2.B. of this Section II of this Agreement, unless for any year the RAILROAD shall be excused from such compliance by other provisions of this Agreement. In this connection the RAILROAD has represented that it is impractical for the RAILROAD to begin compliance with the percentage provisions of part 2.A. immediately upon the effective date of this Agreement, and it is therefore agreed that for the first twelve (12) calendar months after such effective date, the RAILROAD'S employment percentage obligations shall be as follows: Beginning the first day of the seventh (7th) calendar month after this Agreement is executed and has become fully effective and continuing for six (6) calendar months thereafter, in place of the percentages set out in subparagraphs (a), (b), (c) and (d) of part 2.A. of this Section II of this Agreement, the following minimum percentages shall apply, viz.:

[8]

(a) — 38.4%
(b) — 20.0%
(c) — 4.9%
(d) — 4.4%

Upon compliance with such percentages for the last six (6) months of the first twelve (12) months from and after the effective date hereof, it shall be conclusively deemed that the obligations of the RAILROAD for all of said first twelve (12) months period, are being performed to the full extent required by the provisions of this Agreement if the applicable of such percentage requirements (substituted for those set out in (a), (b), (c) and (d) of part 2.A.) are met. Compliance with the above shall relieve the RAILROAD of the obligation of complying with the percentages set forth in part 2.A. during, and only during, the first twelve (12) months following the effective date of this agreement.

2.D. The actual number of Office and Shop Employees at Palestine for any year shall be calculated by adding together the twelve (12) sums representing the actual number of such Employees on the pay roll for each month of the year, and dividing the result by twelve (12). Each annual average total number of Office and Shop Employees for each railroad shall be determined by the average of twelve (12) monthly employee counts which shall be made by the RAILROAD once during each month of each calendar year, each such count to be of the total number of Office and Shop Employees in service as of a day reasonably near the middle of the month, in accordance with regulations of the Interstate Commerce Commission. Within a reasonable time after each monthly employee count is made of the Office and Shop Employees of each railroad affected by the provisions of parts 2.A. and 2.C. of this Section II of this Agreement, full particulars thereof shall be obtained and furnished Palestine and Anderson County by the RAILROAD. Likewise, within a reasonable time after the end of each calendar year (and in any event prior to the following July 1st), the RAILROAD shall furnish Palestine and

Anderson County all information necessary for the City and County to determine whether there has been compliance by the RAILROAD with the provisions of part 2.B. of this Section II hereof during the preceding calendar year. Representatives of the City and County shall have the right at all reasonable times during business hours, after first giving the RAILROAD reasonable notice in advance thereof, to audit, inspect and copy records of the RAILROAD relating to the subject matter of this Agreement.

3. So long as the RAILROAD shall in good faith comply with the provisions of this Agreement, it shall not be necessary that the RAILROAD keep and maintain at Palestine, Texas, any one or more of the following officials of International or of any successor of International: President, Vice-President and General Manager, Secretary, Treasurer, Auditor, General Freight Agent, Traffic Manager, General Superintendent, General Passenger and Ticket Agent, Chief Engineer, Master of Transportation, Fuel Agent, General Claim Agent, Superintendent of Motive Power and Machinery, and Master Mechanic; nor any of its general offices, machine shops and roundhouses.

4. The RAILROAD shall promptly notify the City and County, and the City and County shall promptly notify the RAILROAD, of any proceeding to which any of them or their successors may be a

[9]

party or may have knowledge, hereafter filed or to be filed with the Railroad Commission of Texas or with the Interstate Commerce Commission or with other governmental authority, State or Federal, having jurisdiction in railroad matters, or in any Court, concerning or which might in any substantial way affect the rights of the RAILROAD and

the City and County and their citizens under this Agreement; and in the event any such proceeding shall be filed, the RAILROAD and the City and County shall cooperate with each other in enforcing the provisions of this Agreement without diminution of any party's rights hereunder.

5. No waiver by the City and County, or either of them, of all or any part of this Agreement, and no status allowed to exist or course of action allowed to continue, either with or without knowledge of officials of the City and County, and no delay on the part of the City and County, or either of them, in exercising any rights available to such parties hereunder shall operate as a waiver of any right of the City and County to insist on full compliance with this Agreement, or in any way prejudice the City and County in enforcing the terms and provisions hereof.

6. In the event the RAILROAD shall be rendered unable wholly or in part by *force majeure* to carry out its obligations under this Agreement, it is agreed that upon its giving notice and full particulars of such *force majeure* in writing to the City and County as soon as possible after the occurrence of the cause relied on, then the obligations of the RAILROAD so far as they are affected by such *force majeure*, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch. The term "*force majeure*" as employed herein shall include acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, and any other causes of a similar nature not within the control of the RAILROAD and which by the exercise of due diligence it is unable to prevent or overcome. It is agreed that

the settlement of strikes, lockouts, or other industrial disturbances shall be entirely within the discretion of the RAILROAD, and the above requirement that any *force majeure* shall be remedied with reasonable dispatch shall not require the RAILROAD to settle strikes, lockouts, or labor disputes by acceding to the demands of an opposing party or parties when such course is inadvisable in the discretion of the RAILROAD.

7. If the RAILROAD shall for any reason not excused by some provision of this Agreement fail to perform in accordance with the terms of this Agreement in good faith to the full extent herein required, the City and County may:

(a) Require the specific performance by the RAILROAD of its obligations hereunder; or,

(b) Notify the RAILROAD in writing of the intention of the City and County to rescind this new agreement unless the RAILROAD shall, within a reasonable time after receipt of such notice, cure any defaults specifically brought to its attention in such written notice in

[10]

a manner reasonably satisfactory to the City and County; and upon the RAILROAD'S failure to do so within such period, the City and County may apply to the proper court for a hearing to determine whether any of said defaults exist as claimed and constitute an unexcused breach of this Agreement and the new judgment based thereon, and if the Court shall find that the RAILROAD has defaulted as claimed and that such defaults, or any of them, do constitute an unexcused breach of this Agreement and the new judgment based thereon, the City and County shall be entitled to rescind this Agreement and to have the Court enter an Order reinstating the 1914 Judgment unaffected by the

provisions of this Agreement; and upon the entry of such an Order such 1914 Judgment shall again be in full force and effect and may be enforced against the RAILROAD (or its successors and assigns), and the parties hereto shall thereupon be restored to their original positions and respective rights and obligations as they existed immediately prior to the execution of this Agreement and the entry of the new judgment based thereon, and neither the elapsing period of time nor anything that occurred under and pursuant to this Agreement and the new judgment based thereon shall in anywise prejudice the rights to any party hereto. If for any reason the City and County shall not apply to the Court for such a determination and Order of the Court reinstating the 1914 Judgment, or if, after such an application is filed, the Court shall for any reason decline to enter such an Order as requested by the City and County, this Agreement and the new judgment based thereon shall continue in full force and effect as though no such notice of intention to rescind this contract had been given the RAILROAD by the City and County;

(c) Either concurrently, independently, or cumulative of the foregoing, exercise or enforce any other right or remedy which may be available to the City and County and their citizens under the then existing circumstances; but in no event shall the RAILROAD, its successor or successors, be subjected to any suit for any money damages or penalties or forfeitures, if any, arising or claimed to have arisen by reason of any alleged non-compliance with the 1914 Judgment on the part of the RAILROAD occurring prior to the date hereof, or occurring after the date hereof but prior to reinstatement of the 1914 Judgment as provided in paragraph (b) last above.

III.

It is agreed that this Agreement and the new Judgment to be entered in place of the 1914 Judgment as provided in

paragraph 1. of Section II of this Agreement shall have the same status under the Federal Bankruptcy Act as the 1914 Judgment and the contract and agreement mentioned therein; and nothing contained in this Agreement or in such new Judgment shall in any way diminish the right of Palestine and Anderson County or of the RAILROAD under Section 77(n) or other provisions of such Federal Bankruptcy Act

[11]

except as may be expressly provided herein or in such new Judgment.

IV.

As part of the consideration for this Agreement:

1. The Trustee agrees, within a reasonable time after the entry of the new Judgment provided for in Section V hereof (if he has not theretofore done so), to: (a) recondition, remodel or replace such shop buildings at Palestine as may be necessary to provide proper and adequate shop facilities for the personnel of the RAILROAD employed and to be employed at Palestine, Texas, under the terms of the Agreement; (b) to install additional freight car repair facilities; and (c) to provide such other facilities and equipment as may be necessary for the mechanical and other work to be performed at the Palestine shops. The Trustee shall have the right to dismantle and remove any shop buildings and other facilities which are now or later become obsolete and no longer required for such work.

2. The Trustee recognizes the desirability, in the operation of Missouri Pacific Lines, of having a modern office building at Palestine, Texas, and, subject to approval of the Reorganization Court, agrees to expend approximately $200,000.00 for the construction of such a building on land

owned by International at Palestine, Texas. Once such approval is obtained, such construction shall be begun and completed with due diligence.

V.

(a) This Agreement is subject to and conditioned upon the approval of the District Court of Cherokee County, Texas, by the entry by such Court of a new judgment to take the place of the 1914 Judgment in substantially the form of judgment attached hereto and made a part hereof as Exhibit "B"; and upon execution and delivery of this Agreement, the parties hereto agree to promptly move the District Court of Cherokee County, Texas, to enter a new judgment in substantially the form of judgment attached hereto as Exhibit "B" hereof. This Agreement shall become fully effective upon the entry of such a judgment.

(b) If the City and County shall elect to file an application with the Interstate Commerce Commission to obtain an approval by such Commission of this Agreement and the new Judgment to be entered by the District Court of Cherokee County, Texas, the City and County shall so notify the RAILROAD in writing and upon receipt of any such notice, the RAILROAD shall join with the City and County in presenting and seeking approval of such application and the RAILROAD shall cooperate with the City and County in all reasonable and proper ways with respect thereto.

VI.

All notices required to be given under any of the provisions of this Agreement shall be in writing and shall be conclusively presumed to have been communicated to the party to whom such

[12]

notice is to be given when the party giving such notice deposits a properly stamped envelope containing such notice in the United States mail, first class, addressed as follows:

The Mayor
City of Palestine
Palestine, Texas

The County Judge
Anderson County
Palestine, Texas

Guy A. Thompson, Trustee
International-Great Northern Railroad Company
Missouri Pacific Building
13th at Olive Streets
St. Louis, Missouri

The address of any party hereto may be changed by such party giving each of the other parties, notice of such change of address.

VII.

The terms of this Agreement shall extend to the successors and assigns of the parties hereto. Until final termination of the Reorganization Proceedings, the Trustee shall perform all obligations of the RAILROAD and of the Trustee hereunder pursuant to orders of the aforesaid Reorganization Court, and thereafter, the RAILROAD or its successor or successors, shall perform such obligations; and this Agreement shall extend to and be binding upon the Reorganization Managers appointed pursuant to any final Plan of Reorganization of International, and shall be binding upon each person, corporation, or other entity which succeeds to the interest, properties, and position of International-Great Northern Railroad Company.

IN WITNESS WHEREOF, Guy A. Thompson, as Trustee of International-Great Northern Railroad Company pursuant to authorization of the Reorganization Court, has executed this Agreement; and the City of Palestine, Texas, has caused this Agreement to be executed in its behalf by its Mayor, Robert H. Pickel, Jr., and to be countersigned and attested by its City Secretary, J. G. Hardgrave, each thereunto duly authorized by the City Council of the City of Palestine; and Anderson County, Texas, has caused this Agreement to be executed in its behalf by its County Judge, Franklin C. Williams, and to be attested by its County Clerk, Cecil W. James, each thereunto duly authorized by order of the County Commissioners' Court of Anderson County, Texas, and the undersigned citizens of Palestine and Anderson County and of the State of Texas execute this Agreement as representatives of a class composed of all the citizens thereof having any interest in the matters which are involved in this Agreement; in several counterpart originals, all as of the 21st day of December 1954.

[13]

/s/ GUY A. THOMPSON
Guy A. Thompson, Trustee
International-Great Northern
Railroad Company

CITY OF PALESTINE,
TEXAS
/s/ By ROBERT H. PICKEL, JR.
Robert H. Pickel, Jr.
Mayor

ANDERSON COUNTY,
TEXAS
/s/ By FRANKLIN C. WILLIAMS
Franklin C. Williams,
County Judge

/s/ H. V. HAMILTON
H. V. Hamilton

/s/ H. I. MEYERS
H. I. Meyers

/s/ C. L. HUFSMITH
C. L. Hufsmith

/s/ EUGENE FISH
Eugene Fish

/s/ S. S. STAFFORD
S. S. Stafford

/s/ LAMAR HAMILTON
Lamar Hamilton

/s/ C. W. HANKS
C. W. Hanks

/s/ K. A. ANDERSON
K. A. Anderson

/s/ J. V. MURDAUGH
J. V. Murdaugh

/s/ N. C. WOOLVERTON
N. C. Woolverton

Countersigned and
Attested:
/s/ J. G. HARDGRAVE
J. G. Hardgrave
City Secretary of
Palestine, Texas

Attest:
/s/ CECIL W. JAMES
County Clerk of
Anderson County, Texas
By Dora Schmidt, Deputy

Number of Office and Shop Employees whose jobs are properly classified by and reportable to the Interstate Commerce Commission as:

(901) I Executive Officials and Staff Assistants
(902) II Professional, Clerical and General
(904) IV Maintenance of Equipment and Stores
(905) V Transportation (other than Train, Engine and Yard)
(906) VI(a) Transportation (Yardmasters, Switch Tenders and Hostlers)

for the year 1910, and the Years 1924 to 1953, inclusive, plus six months of 1954.

	PALESTINE	I-GN RAILROAD		I-GN plus G.C.L.		MoPac. plus I-GN		MISSOURI PACIFIC LINES	
Year	Number of Employes	Number of Employes	Palestine Percent	Number of Employes	Palestine Percent	Number of Employes	Palestine Percent	Number of Employes	Palestine Percent
	NOTE "A"			NOTE "B"		NOTE "B"		NOTE "B"	
1910*	964	2,499	38.6	*	*	*	*	*	*
		NOTE "B"							
1924	1,021	2,769	36.9	4,660	21.9	23,933	4.3	25,824	4.0
1925	1,024	2,648	38.7	4,812	21.3	24,253	4.2	26,417	3.9
1926	1,010	2,657	38.0	5,046	20.0	23,755	4.3	26,144	3.9
1927	925	2,593	35.7	4,995	18.5	22,243	4.2	24,645	3.8
1928	912	2,658	34.3	4,985	18.3	21,543	4.2	23,870	3.8
1929	963	2,719	35.4	5,070	19.0	22,144	4.3	24,495	3.9
1930	773	2,539	30.4	4,874	15.9	19,739	3.9	22,074	3.5
1931	852	2,577	33.1	4,662	18.3	16,846	5.1	18,931	4.5
1932	618	1,911	32.3	3,514	17.6	13,239	4.7	14,842	4.2
1933	717	2,014	35.6	3,466	20.7	13,794	5.2	15,246	4.7

Year	PALESTINE Number of Employes	I-GN RAILROAD Number of Employes	I-GN RAILROAD Palestine Percent	I-GN plus G.C.L. Number of Employes	I-GN plus G.C.L. Palestine Percent	MoPac. plus I-GN Number of Employes	MoPac. plus I-GN Palestine Percent	MISSOURI PACIFIC LINES Number of Employes	MISSOURI PACIFIC LINES Palestine Percent
	NOTE "A"			NOTE "B"		NOTE "B"		NOTE "B"	
1934	721	2,058	35.0	3,661	19.7	14,180	5.1	15,783	4.6
1935	721	2,032	35.5	3,682	19.6	14,448	5.0	16,098	4.5
1936	772	2,149	35.9	3,887	19.9	15,293	5.0	17,031	4.5
1937	766	2,146	35.7	3,946	19.4	15,567	4.9	17,367	4.4
1938	658	1,968	33.4	3,668	17.9	13,959	4.7	15,659	4.2
1939	666	1,911	34.9	3,575	18.6	13,998	4.8	15,662	4.3
1940	625	1,803	34.7	3,395	18.4	13,693	4.6	15,285	4.1
1941	629	1,951	32.2	3,632	17.3	14,829	4.2	16,510	3.8
1942	717	2,188	32.8	4,151	17.3	16,794	4.3	18,757	3.8
1943	793	2,409	32.9	4,658	17.0	18,698	4.2	20,947	3.8
1944	850	2,556	33.3	5,010	17.0	19,064	4.5	21,518	4.0
1945	924	2,630	35.1	5,080	18.2	19,054	4.8	21,504	4.3
1946	934	2,649	35.3	5,133	18.2	18,909	4.9	21,393	4.4
1947	860	2,575	33.4	5,032	17.1	19,226	4.5	21,683	4.0
1948	851	2,493	34.1	4,872	17.5	18,993	4.5	21,372	4.0
1949	794	2,225	35.7	4,271	18.6	15,172	5.2	17,218	4.6
1950	820	2,206	37.2	4,706	17.4	17,949	4.6	20,449	4.0
1951	924	2,197	42.1	4,927	18.8	18,810	4.9	21,540	4.3
1952	830	2,056	40.4	4,617	18.0	18,132	4.6	20,693	4.0
1953	801	2,029	39.5	4,548	17.6	18,072	4.4	20,591	3.9
1954(1)	711	1,734	41.0	4,100	17.3	15,614	4.6	17,980	4.0
1924 to 6/30/54 Total	25,182	71,050		136,635		551,943		617,528	
Average	812	2,292	35.4	4,408	18.4	17,805	4.6	19,920	4.1

Year	PALESTINE Number of Employes	I-GN RAILROAD Number of Employes	I-GN RAILROAD Palestine Percent	I-GN plus G.C.L. Number of Employes	I-GN plus G.C.L. Palestine Percent	MoPac. plus I-GN Number of Employes	MoPac. plus I-GN Palestine Percent	MISSOURI PACIFIC LINES Number of Employes	MISSOURI PACIFIC LINES Palestine Percent
	NOTE "A"			NOTE "B"		NOTE "B"		NOTE "B"	
Agreed Percentage 1st Year			38.4		20.0		4.9		4.4
Agreed Percentage Thereafter			39.4		20.5		5.1		4.5

* 1910 data for total number of I-GN Employees is based on information shown on page 91 of the 1910 Annual Report to the Interstate Commerce Commission, excluding General Officers, Enginemen, Firemen, Conductors, Other Trainmen, Section Foremen and Other Trackmen. General Officers were excluded as the location of their offices is unknown and no officer payroll giving this information is available.

(1) First six months of 1954.

NOTE "A" — The number shown is the 12 months average of the number of Office and Shop Employees on the payroll at Palestine, Texas, in accordance with the Rules Governing the Classification of Railroad Employees and Reports of their Service and Compensation Prescribed by the Interstate Commerce Commission, effective January 1, 1951.

NOTE "B" — The number shown is the 12 months average of the number of Office and Shop Employees in service as of the 15th day of the month, except when it falls on Saturday, Sunday or a holiday, in which case the count is made as of the last preceding business day in accordance with the Rules Governing the Classification of Railroad Employees and Reports of their Service and Compensation Prescribed by the Interstate Commerce Commission, effective January 1, 1951.

(Revised 11/13/54)

EXHIBIT "B"

Exhibit "B" is not here printed, but as slightly modified by the Court and entered of record March 2, 1955 is here printed.

EXHIBIT "B"

NO. 6415

ANDERSON COUNTY, ET AL.

v.

INTERNATIONAL & GREAT NORTHERN RAILWAY COMPANY
IN THE DISTRICT COURT OF CHEROKEE COUNTY, TEXAS

1955 JUDGMENT

On the 7th day of February, 1955, there came on to be heard and considered the Motion to set aside the 1914 Judgment and enter in lieu thereof a new Judgment, filed in this Cause December 31, 1954, by Anderson County, Texas, the City of Palestine, Texas, H. V. Hamilton, H. I. Myers, C. L. Hufsmith, Eugene Fish, S. S. Stafford, Lamar Hamilton, C. W. Hanks, K. A. Anderson, J. V. Murdaugh, and N. C. Woolverton, resident citizens of Palestine, Anderson County, Texas (the foregoing being herein sometimes referred to as the "City of Palestine, et al. Parties"); International-Great Northern Railroad Company, and Guy A. Thompson, Trustee of International-Great Northern Railroad Company (the latter two parties being herein sometimes referred to as the "Railroad Parties"); all of such parties being represented in Court by and through their respective attorneys of record; and,

It appearing to the Court that this Cause was originally filed as Cause No. 8589 in the District Court of Anderson County, Texas, and upon motion to change the venue being filed by the Defendant railroad company, the cause was removed to the District Court of Cherokee County, Texas, and tried by this Court beginning January 7, 1914, and

ending January 17, 1914; and that on such last mentioned date a final judgment was entered by this Court in accordance with the findings of the jury (such judgment being herein sometimes referred to as the "1914 Judgment", same being recorded in Minute Book "M", page 191 in the Office of the District Clerk, Cherokee County, Texas), and that upon the appeal of the 1914 Judgment by the defendant railroad company, same was finally affirmed in all respects by the United States Supreme Court; and

It appearing to the Court that Anderson County, Texas, and the City of Palestine, Texas, Movants herein, are two of the original plaintiffs in this cause; and that International-Great Northern Railroad Company, a Texas corporation, is the same corporation as "International & Great Northern Railway Company", the original defendant in this Cause, such corporation having changed its corporate name on August 21, 1922 to "International-Great Northern Railroad Company", by Charter Amendment; and,

It appearing to the Court that on March 31, 1933, Missouri Pacific Railroad Company filed a petition in the United States District Court for the Eastern Judicial District of Missouri, Eastern Division, Cause No. 6935, styled, "In the Matter of Missouri Pacific Railroad Company, Debtor", for reorganization pursuant to the provision of Section 77 of the Federal Bankruptcy Act; and on the same day a subsidiary of such railroad

[18]

company, New Orleans, Texas and Mexico Railway Company, and its subsidiary, International-Great Northern Railroad Company, each filed petitions in the same proceedings also praying for reorganization as a part of or in connection with any plan of reorganization adopted for

Missouri Pacific Railroad Company; and that on June 22, 1933, L. W. Baldwin and Guy A. Thompson were appointed temporary Trustees of the properties of such Debtors in said Cause No. 6935; and that by order of such Federal District Court dated July 25, 1933, their appointment was here made permanent; and that thereafter by order of such court entered December 26, 1935, the Court accepted said Baldwin's resignation as Co-Trustee and continued Guy A. Thompson as sole Trustee; that said proceedings are still pending, and that Guy A. Thompson is still sole Trustee of all Debtors therein; and that said Trustee has been authorized by the Federal District Court appointing him to intervene in this proceeding and he has so intervened as Trustee for and in behalf of International-Great Northern Railroad Company, and such Federal District Court and its said Trustee have consented to the jurisdiction of this Court in so far as the matters involved in this proceeding are concerned; and,

It appearing to the Court that H. V. Hamilton, H. I. Myers, C. L. Hufsmith, Eugene Fish, S. S. Stafford, Lamar Hamilton, C. W. Hanks, K. A. Anderson, J. V. Murdaugh, and N. C. Woolverton, residents of Palestine, Anderson County, Texas, have intervened as plaintiffs herein and as representatives of a class composed of all the citizens in this State and particularly of Anderson County, Texas, having any interest in the matters involved in this proceeding; and,

It further appearing to the Court that Haile Perry, W. M. Presley, S. D. Robinson, Henry Leon, J. C. Dickey, B. B. Campbell, Ben Kelly, and Oliver Davis (herein sometimes referred to as "Opposing Interveners"), also residents of Palestine, Anderson County, Texas, have also intervened herein as plaintiffs and as representatives of a class composed of all citizens of the State of Texas, and particularly

of Anderson County, Texas, having any interest in maintaining inviolate and without change or modification the judgment of this Court rendered in this Cause on January 17, 1914, and the rights, interest and effect of the said judgment at the time it was pronounced, such parties being present in Court in person or by and through their respective attorneys of record; and it also appearing to the Court that the said Opposing Interveners as well as the citizens who have joined with the City of Palestine and Anderson County, Texas, purport to sue herein as successors of the citizens who joined in this suit originally and were parties to the judgment entered in 1914, to-wit: George A. Wright, J. W. Ozment, A. L. Bowers, John R. Hearne, Z. L. Robinson, E. L. Link, R. C. Sewell, John M. Colley, and P. H. Hughes, all of whom are now deceased; and,

It further appearing to the Court that the Attorney General of the State of Texas has filed a disclaimer herein in behalf of the State of Texas and the Railroad Commission of Texas; and,

All parties having announced in Open Court their agreement that the Court should hear the evidence in support of and in opposition to the Motion for New Judgment before ruling on the Motions of the City of Palestine, et al. Parties and of the Railroad Parties to Strike the Intervention of Opposing Inter-

[19]

veners and before ruling on the Special Exceptions contained in the pleadings of any party; and,

It appearing to the Court that all parties having any interest in the matters here involved were (and are) before

the Court; and all parties having announced ready to proceed before the Court without intervention of a jury (subject to the Motions to Strike the Intervention of the Opposing Interveners and subject to the Special Exceptions contained in the pleadings of the parties), the Court then proceeded to hear evidence in support of and in opposition to the Motion for New Judgment, the trial proceeding from day to day from February 7th until February 9, 1955, and on the last mentioned date, before oral argument, the attorneys for City of Palestine, et al. Parties announced in Open Court that they would not urge their Motion to Strike the Intervention of Opposing Interveners and that such Parties were willing to have the Court overrule such Motion; and the Court then did so, and also overruled the Motion of the Railroad Parties to Strike the Intervention of Opposing Interveners, to which latter action of the Court the Railroad Parties then duly excepted; and,

After hearing oral argument by the attorneys for all parties, the Court announced that it would take the matters at issue under advisement and would then notify the parties of the Court's decision with respect thereto; and the Court having considered the evidence and the arguments of counsel, is of the opinion and FINDS, and therefore ORDERS, ADJUDGES AND DECREES, as follows, to-wit:

I. (a)

The Motions of the City of Palestine, et al. Parties and of the Railroad Parties to Strike the Intervention of Opposing Interveners are in each and all respects overruled; to which action of the Court Guy A. Thompson, Trustee of International-Great Northern Railroad Company, Debtor, and said Railroad Company, each duly excepted.

I. (b)

All Special Exceptions contained in the pleadings of any party are hereby, in all respects, overruled; to which action of the Court, so far as their Special Exceptions are concerned, Opposing Interveners duly excepted.

I. (c)

The Court finds that conditions in the railroad business have changed since the original 1914 Judgment was entered; and the Court further finds that by reason of such changed conditions, the parties joining in the Motion for New Judgment have entered into a new Agreement (superseding the Agreement referred to in the 1914 Judgment), dated December 21, 1954, providing that the Defendant Railroad Company and its Trustee (upon the entry by this Court of a judgment based on such new agreement) shall be obligated to keep and maintain at Palestine, Texas, a

[20]

definitely ascertainable number of certain classes of railroad employees in place of the railroad's obligation under the 1914 Judgment (and the agreement referred to therein) to keep and maintain certain officials and the general offices, machine shops and roundhouses of the defendant railroad at Palestine, Texas; a copy of such agreement being attached to the Motion for New Judgment as Exhibit "A" thereof; and it appearing that such new agreement is expressly subject to the approval of this Court evidenced by its entry of a new judgment in this Cause in substantially the form of judgment attached to and made a part of such new agreement as Exhibit "B" thereof; and

The Court being of the opinion, based on the evidence and argument of counsel, that the Court should grant the Motion for New Judgment, it is therefore ORDERED that such Motion be and the same is hereby GRANTED, and the objections of Opposing Interveners with respect thereto be and same are hereby OVERRULED, and such new agreement dated December 21, 1954, by and between the parties filing the the Motion for New Judgment is hereby approved, and in connection therewith, IT IS FURTHER ORDERED, ADJUDGED AND DECREED as follows, to-wit:

As used in this Judgment, the following terms shall, unless herein expressly provided otherwise, have the following meanings:

"Palestine" or "the City" shall mean the City of Palestine, Texas; "Anderson County" or "the County" shall mean Anderson County, Texas; and "the Trustee" shall mean Guy A. Thompson in his capacity as Trustee of International-Great Northern Railroad Company, Debtor in Cause No. 6935, pending in the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri.

"Missouri Pacific Lines" shall mean the following railroad companies and their respective subsidiaries hereinafter named to-wit:

(1) *Missouri Pacific Railroad Company* and the following of its subsidiaries, viz.: Boonville, St. Louis & Southern Railroad Company; Cairo & Thebes Railroad Company; The Chester & Mount Vernon Railroad Company; Fort Smith Suburban Railway Company; Marion & Eastern Railroad Company; Missouri Pacific Railroad Corporation in Nebraska; and Natchez & Southern Railway Company; such railroads being herein sometimes collectively referred to as "Missouri Pacific";

(2) *New Orleans, Texas and Mexico Railway Company* (herein sometimes called "New Orleans"), and the following of its subsidiaries, viz.: Asherton & Gulf Railway Company; Asphalt Belt Railway Company; The Beaumont, Sour Lake & Western Railway Company; Houston and Brazos Valley Railway Company; Houston North Shore Railway Company; Iberia, St. Mary & Eastern Railroad Company; New Iberia & Northern Railroad Company; Orange & Northwestern Railroad Company; Rio Grande City Railway Company; The St. Louis, Brownsville & Mexico Railway Company; San Antonio Southern Railway Company; San Antonio, Uvalde & Gulf Railroad Company; San Benito & Rio Grande Valley Railway Company;

[21]

Sugarland Railway Company; (New Orleans and such subsidiaries being herein sometimes referred to collectively as "Gulf Coast Lines"); and,

(3) *International-Great Northern Railroad Company* and its subsidiary, Austin Dam & Suburban Railway Company being herein sometimes collectively referred to as "International" or the "RAILROAD".

"Reorganization Proceedings" shall mean the proceedings now pending before the Interstate Commerce Commission docketed as Finance Docket 9918, and styled, "Missouri Pacific Railroad Company Reorganization", and the same proceedings now pending in the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri, Docket No. 6935, styled, "In the Matter of Missouri Pacific Railroad Company, et al., Debtors"; and "Reorganization Court" shall mean such last mentioned Court in which the Reorganization Proceedings are pending.

"Office and Shop Employees" shall mean those railroad officers and employees whose jobs are properly classified

and reportable under any of the following (and no other) Interstate Commerce Commission classifications, to-wit:

(901)	I	Executives, Officials and Staff Assistants;
(902)	II	Professional, Clerical and General;
(904)	IV	Maintenance of Equipment and Stores;
(905)	V	Transportation (other than Train, Engine and Yard);
(906)	VI(a)	Transportation (Yardmasters' Switch Tenders, and Hostlers);

in accordance with the "Rules Governing the Classification of Railroad Employees and Reports of their Service and Compensation" prescribed by the Interstate Commerce Commission by its order dated October 19, 1950, effective January 1, 1951, as the same may be amended from time to time, in which latter events any new classifications of the same or similar jobs shall apply.

II.

1. The 1914 Judgment is hereby set aside and superseded by this Judgment; and this Judgment and the aforesaid new Agreement dated December 21, 1954, shall also supersede any prior agreement on which such 1914 Judgment may have been based between the RAILROAD and its predecessors in title, or any of them, on the one hand, and Palestine, Anderson County, and the citizens of Palestine, Anderson County, and the State of Texas, or any of them, on the other hand, regarding the maintenance of general offices, machine shops, and roundhouses at Palestine, Texas.

2. A. Subject to the ensuing terms and provisions hereof, as long as the RAILROAD or any successor in interest or assign thereof shall remain in the railroad business, the RAILROAD shall, each calendar year, actually employ or cause to be employed at Palestine, Texas, during that year, a number of Office and Shop Employees which shall be not less than:

[22]

(a) 39.4% of the average number of Office and Shop Employees employed by International at all points for the same year;

and (except as may be otherwise provided herein) which shall be not less than:

(b) 20.5% of the total of the average number of Office and Shop Employees employed by International and Gulf Coast Lines, combined, at all points for the same year; and this percentage shall also apply (and then will take the place of the percentages set out in (a) above and in (c) below) in the event International shall ever merge, combine or consolidate solely with the Gulf Coast Lines into one corporation;

and (except as may be otherwise provided herein) which shall be not less than:

(c) 5.1% of the total of the average number of Office and Shop Employees employed by International and Missouri Pacific, combined, at all points for the same year; and this percentage shall also apply (and then will take the place of those set out in (a) and (b) above) in the event International shall ever merge, combine, or consolidate solely with Missouri Pacific into one corporation;

and (except as may be otherwise provided herein) which shall be not less than:

(d) 4.5% of the total of the average number of Office and Shop Employees employed by International and all of the remaining Missouri Pacific Lines, combined, at all points for the same year; and this percentage shall also apply (and then will take the place of the percentages set out in (b) and (c) above in the event that Gulf Coast Lines and Missouri Pacific shall merge, combine, or consolidate into one corporation; and this percentage shall also apply (and then exclusively, and in place of the percentages set out in (a), (b) and (c) above), in the event International, Gulf Coast Lines, and Missouri Pacific shall ever merge, combine, or consolidate with each other into one corporation;

and the reference to each railroad in (a), (b), (c) and (d) above shall include its successors and assigns to the extent of the operation of the railroad referred to. The provisions of this part 2.A. and part 2.C. of this Section II are subject to the following express conditions, viz.: (1) If International as reorganized shall emerge from the Reorganization Proceedings as a separate corporation which is not a subsidiary of, and does not have as a subsidiary, any of the other Missouri Pacific Lines (including any successor or successors thereof), and which is in fact independent of any ownership or control (whether by reason of a common ownership of stock or otherwise) by, and does not itself own or control any of the other Missouri Pacific Lines (including the successor or successors thereof) or any subsidiary thereof, then subparagraphs (b), (c) and (d) above shall have no application so long (and only so long) as International shall

[23]

operate as such an independent railroad; (2) If International as reorganized shall emerge from the Reorganization Proceedings merged with Gulf Coast Lines into one

corporation which is not a subsidiary of, and does not have as a subsidiary, any of the other Missouri Pacific Lines (including the successor or successors thereof) and which is in fact independent of any ownership or control (whether by reason of a common ownership of stock or otherwise) by, and does not itself own or control, any of the other Missouri Pacific Lines (including the successor or successors thereof) or any subsidiary thereof, then (as provided in subparagraph (b) above) subparagraphs (a) and (c) above shall no longer apply, and, it is further agreed, neither shall subparagraph (d) above have any application so long (and only so long) as merger of International and Gulf Coast Lines shall operate as such an independent railroad; (3) If International as reorganized shall emerge from the Reorganization Proceedings merged with Missouri Pacific into one corporation which is not a subsidiary of, and does not have as a subsidiary, any of the other Missouri Pacific Lines (including the successor or successors thereof) and which is in fact independent of any ownership or control (whether by reason of a common ownership of stock or otherwise) by, and does not itself own or control any of the other Missouri Pacific Lines (including the successor or successors thereof) or any subsidiary thereof, then (as provided in subparagraph (c) above) subparagraphs (a) and (b) above shall no longer apply, and it is further agreed, neither shall subparagraph (d) above have any application so long (and only so long) as such merger of International and Missouri Pacific shall operate as such an independent railroad; and (4) Subject to the three (3) preceding conditions, if any of the Missouri Pacific Lines (including the successor or successors thereof except a successor constituting a merger with International) other than International or its successor shall emerge from the Reorganization Proceedings as a separate corporation which is not a subsidiary of, and does not

have as a subsidiary, any of the other Missouri Pacific Lines (including the successor or successors thereof) and which is in fact independent of any ownership or control (whether by reason of a common ownership of stock or otherwise) by, and does not itself own or control any of the other Missouri Pacific Railroad Lines (including the successor or successors thereof) or any subsidiary thereof, then the Office and Shop Employees of such railroad shall be excluded from any calculation of percentages provided for in this part 2.A. and in part 2.C. of this Section II of this Judgment so long (and only so long) as such railroad shall operate as such an independent railroad. Subject to the foregoing it is further provided that in the event that: (i) International (or its successor) or any of the other Missouri Pacific Lines (including the successor or successors thereof) shall ever merge, combine or consolidate with any of the other Missouri Pacific Lines or with any other railroad or railroads; and (ii) if subsections (b), (c) and (d) above, or any of them, do not expressly apply thereto, then the percentages set out in (a), (b), (c) and (d) above, or the one or more of them which would be affected thereby, shall be recalculated and redetermined by multiplying each percentage so affected by a fraction, the numerator of which is the average annual number of Office and Shop Employees employed by the railroad or railroads in question (i.e., other than the railroad or railroads with which the merger, combination, or consolidation is made) during the five (5) years immediately preceding the year in which

[24]

the merger, combination, or consolidation occurs, and the denominator of which is a sum equal to the numerator plus the average annual number of Office and Shop Employees employed by the railroad or railroads with which the merger, combination, or consolidation is made during the same

five (5) year period; and thereafter beginning the effective date of such merger, combination, or consolidation, the percentage or percentages obtained as the product or products of such multiplication shall be applied (in so far as the merged, combined, or consolidated railroad is concerned) until a new or different merger, combination, or consolidation is made, in which event there shall be another recalculation and redetermination under the provisions hereof.

2. B. It is further ORDERED that the total payroll of Office and Shop Employees maintained by the RAILROAD at Palestine for any calendar year shall never be less than the product of the minimum number of Office and Shop Employees required to be employed by the RAILROAD at Palestine for that year under the applicable provisions of parts 2.A. or 2.C. of this Judgment (next above or next below) multiplied by the average per capita compensation of all of the Office and Shop Employees used under parts 2.A. or 2.C., as the case may be, in determining the minimum number of Office and Shop Employees required to be employed at Palestine for the year.

2. C. The RAILROAD shall maintain at Palestine, Texas, the number and payroll of Office and Shop Employees required by parts 2.A. and 2.B. of this Section II of this Judgment, unless for any year the RAILROAD shall be excused from such compliance by other provisions of this Judgment. In this connection the RAILROAD has represented to the Court that it is impractical for the RAILROAD to begin compliance with the percentage provisions of part 2.A. immediately upon the effective date of this Judgment, and it is therefore provided that for the first twelve (12) calendar months after such effective date, the RAILROAD'S employment percentage obligations shall be as follows: Beginning the first day of the seventh

(7th) calendar month after this Judgment is entered and continuing for six (6) calendar months thereafter, in place of the percentages set out in subparagraphs (a), (b), (c) and (d) of part 2.A. of this Section II of this Judgment, the following minimum percentages shall apply, viz.:

(a) — 38.4%
(b) — 20.0%
(c) — 4.9%
(d) — 4.4%

Upon compliance with such percentages for the last six (6) months of the first twelve (12) months from and after the entry of this Judgment, it shall be conclusively deemed that the obligations of the RAILROAD hereunder for all of said first twelve (12) months period are being performed to the full extent required by the provisions of this Judgment if the applicable of such percentage requirements (substituted for those set out in (a), (b), (c) and (d) of part 2.A. of this Section II) are met. Compliance with the above shall relieve the RAILROAD of the obligation of complying with the percentages set forth in part 2.A. of this Section II during, and only during, the first twelve (12) months following the entry of this Judgment.

[25]

2. D. The actual number of Office and Shop Employees at Palestine for any year shall be calculated by adding together the twelve (12) sums representing the actual number of such Employees on the payroll for each month of the year, and dividing the result by twelve (12). Each annual average total number of Office and Shop Employees for each railroad shall be determined by the average of twelve (12) monthly employee counts which shall be made by the RAILROAD once during each month of each calendar year, each such count to be of the total number of Office and Shop Employees in service as of a day reason-

ably near the middle of the month, in accordance with regulations of the Interstate Commerce Commission. Within a reasonable time after each monthly employee count is made of the Office and Shop Employees of each railroad affected by the provisions of parts 2.A. and 2.C. of this Section II of this Judgment, full particulars thereof shall be obtained and furnished Palestine and Anderson County by the RAILROAD. Likewise, within a reasonable time after the end of each calendar year (and in any event prior to the following July 1st), the RAILROAD shall furnish Palestine and Anderson County all information necessary for the City and County to determine whether there has been compliance by the RAILROAD with the provisions of part 2.B. of this Section II hereof during the preceding calendar year. Representatives of the City and County shall have the right at all reasonable times during business hours, after first giving the RAILROAD reasonable notice in advance thereof, to audit, inspect and copy records of the RAILROAD relating to the subject matter of this Judgment.

3. So long as the RAILROAD shall in good faith comply with the provisions of this Judgment, it shall not be necessary that the RAILROAD keep and maintain at Palestine, Texas, any one or more of the following officials of International or of any successor of International: President, Vice-President and General Manager, Secretary, Treasurer, Auditor, General Freight Agent, Traffic Manager, General Superintendent, General Passenger and Ticket Agent, Chief Engineer, Master of Transportation, Fuel Agent, General Claim Agent, Superintendent of Motive Power and Machinery, and Master Mechanic; nor any of its general offices, machine shops and roundhouses.

4. The RAILROAD shall promptly notify the City and County, and the City and County shall promptly notify the

RAILROAD, of any proceeding to which any of them or their successors may be a party or may have knowledge, hereafter filed or to be filed with the Railroad Commission of Texas or with the Interstate Commerce Commission or with other governmental authority, State or Federal, having jurisdiction in railroad matters, or in any Court, concerning or which might in any substantial way affect the rights of the RAILROAD or of the City and County and their citizens under this Judgment and the Agreement on which the same is based; and in the event any such proceeding shall be filed, the RAILROAD and the City and County shall cooperate with each other in enforcing the provisions of this Judgment and the aforesaid new Agreement dated December 21, 1954, without diminution of any party's rights hereunder or thereunder.

5. No waiver by the City and County, or either of them, of all or any part of this Judgment, and no status allowed to exist or course of action allowed to continue, either with or without knowledge of officials of the City and County, and no delay on

[26]

the part of the City and County, or either of them, in exercising any rights available to such parties hereunder shall operate as a waiver of any right of the City and County to insist on full compliance with this Judgment, or in any way prejudice the City and County in enforcing the terms and provisions hereof.

6. In the event the RAILROAD shall be rendered unable wholly or in part by *force majeure* to carry out its obligations under this Judgment, it is specifically provided that upon its giving notice and full particulars of such *force majeure* in writing to the City and County as soon as possible after the occurrence of the cause relied on, then the obligations of the RAILROAD so far as they are affected by such *force majeure*, shall be suspended during

the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch. The term *force majeure* as employed herein shall include acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, and any other causes of a similar nature not within the control of the RAILROAD and which by the exercise of due diligence it is unable to prevent or overcome. It is specifically provided that the settlement of strikes, lockouts, or other industrial disturbances shall be entirely within the discretion of the RAILROAD, and the above requirement that any *force majeure* shall be remedied with reasonable dispatch shall not require the RAILROAD to settle strikes, lockouts, or labor disputes by acceding to the demands of an opposing party or parties when such course is inadvisable in the discretion of the RAILROAD.

7. If the RAILROAD shall for any reason not excused by some provision of this Judgment fail to perform in accordance with the terms of this Judgment in good faith to the full extent herein required, the City and County may:

(a) Require the specific performance by the RAILROAD of its obligations hereunder; or,

(b) Notify the RAILROAD in writing of the intention of the City and County to rescind the aforesaid new Agreement on which this Judgment is based unless the RAILROAD shall, within a reasonable time after receipt of such notice, cure any defaults specifically brought to its attention in said written notice in a manner reasonably satisfactory to the City and County; and upon the RAILROAD'S failure to do so within such period, the City and County may apply to this court or any other court of competent jurisdiction for a hearing to determine whether any of said defaults exist as claimed and constitute a breach of this

Judgment and the aforesaid new Agreement on which the same is based not excused by some provision hereof or thereof, and if the Court shall find that the RAILROAD has defaulted as claimed and that such defaults, or any of them, do constitute an unexcused breach of this Judgment and the aforesaid new Agreement on which the same is based, the City and County shall be entitled to rescind the aforesaid new Agreement on which this Judgment is based and shall be

[27]

entitled to have the Court enter an Order reinstating the 1914 Judgment unaffected by the provisions of this Judgment or such new Agreement on which same is based; and upon the entry of such an Order such 1914 Judgment shall again be in full force and effect and may be enforced against the RAILROAD (or its successors and assigns), and the parties hereto shall thereupon be restored to their original positions and respective rights and obligations as they existed immediately prior to the execution by the parties of the aforesaid new Agreement on which this Judgment is based; and neither the elapsing period of time nor anything that occurred under and pursuant to this Judgment or the aforesaid new Agreement on which the same is based shall in anywise prejudice the rights of any party hereto. If for any reason the City and County shall not apply to the Court for such a determination and Order of the Court reinstating the 1914 Judgment, or if, after such an application is filed, the Court shall for any reason decline to enter such an Order as requested by the City and County, this Judgment and the aforesaid new Agreement on which same is based shall continue in full force and effect as though no such notice of intention to rescind such Agreement had been given the RAILROAD by the City and County;

(c) Either concurrently, independently, or cumulative of the foregoing, exercise or enforce any other right or remedy which may be available to the City and County and their citizens under the then existing cir-

cumstances; but in no event shall the RAILROAD, its successor or successors, be subjected to any suit for any money damages or penalties or forfeitures, if any, arising or claimed to have arisen by reason of any alleged non-compliance with the 1914 Judgment on the part of the RAILROAD occurring prior to the entry of this Judgment, or occurring after the entry of this Judgment but prior to reinstatement of the 1914 Judgment as provided in paragraph (b) last above.

III.

This Judgment and the aforesaid new Agreement dated December 21, 1954, on which the same is based shall have the same status under the Federal Bankruptcy Act as the 1914 Judgment and the agreement mentioned therein. Nothing contained in this Judgment or in such new Agreement on which same is based shall in any way diminish the rights of Palestine and Anderson County or of the RAILROAD under Section 77(n) or other provisions of such Federal Bankruptcy Act except as may be expressly provided herein or in such new Agreement.

IV.

1. The defendants, International-Great Northern Railroad Company and its Trustee, Guy A. Thompson, shall, within a reasonable time after the entry of this Judgment: (a) recondition, remodel or replace such shop buildings at Palestine as may be

[28]

necessary to provide proper and adequate shop facilities for the personnel of such RAILROAD employed and to be employed at Palestine, Texas, under the terms of this Judgment and the Agreement on which same is based; (b) install additional freight car repair facilities; and (c) provide such other facilities and equipment as may be necessary for

the mechanical and other work to be performed at the Palestine shops. Such RAILROAD shall have the right to dismantle and remove any shop buildings and other facilities which are now or later become obsolete and no longer required for such work.

2. Defendant Guy A. Thompson, Trustee, having obtained authority from the Reorganization Court to expend approximately $200,000.00 in the construction of a modern office building at Palestine, Texas, on land owned by International at Palestine, Texas, shall proceed to construct such a building and shall complete the same with due diligence.

V.

If the City and County shall elect to file an application with the Interstate Commerce Commission to obtain an approval by such Commission of this Judgment (and the Agreement on which the same is based), the City and County shall so notify the RAILROAD in writing and upon receipt of any such notice, the RAILROAD shall join with the City and County in presenting and seeking approval of such application and the RAILROAD shall cooperate with the City and County in all reasonable and proper ways with respect thereto.

VI.

All notices required to be given under any of the provisions of this Judgment shall be in writing and shall be conclusively presumed to have been communicated to the party to whom such notice is to be given when the party giving such notice deposits a properly stamped envelope containing such notice in the United States mail, first class, addressed as follows:

The Mayor
City of Palestine
Palestine, Texas

The County Judge
Anderson County
Palestine, Texas

Guy A. Thompson, Trustee
International-Great Northern Railroad Company
Missouri Pacific Building
13th at Olive Streets
St. Louis, Missouri

provided that the address of any party hereto may be changed by such party giving each of the other parties, notice of such change of address.

[29]

VII.

In the event of any conflict between any of the terms and provisions of the new Agreement (by and between the parties filing the Motion for New Judgment), dated December 21, 1954, and the terms and provisions of this Judgment, the terms and provisions of this Judgment shall control.

VIII.

The terms of this Judgment shall extend to the successors and assigns of the parties to this Cause. Until final termination of the Reorganization Proceedings, the Trustee shall perform all obligations of the RAILROAD and of the Trustee hereunder pursuant to orders of the aforesaid Reorganization Court, and thereafter, the RAILROAD or its successor or successors, shall perform such obligations; and this Judgment shall extend to and be binding upon the Reorganization Managers appointed pursuant to any final Plan of Reorganization of International, and shall be binding upon each person, corporation, or other entity which

succeeds to the interest, properties, and position of International-Great Northern Railroad Company.

IX.

Any relief prayed for by any of the parties and Interveners which is not expressly granted by this Judgment is hereby denied.

X.

All costs of Court in connection with the Motions to Strike the Intervention of Opposing Interveners and in connection with the Motion for New Judgment and this Judgment are taxed jointly and severally against the City of Palestine, et al. Parties and the Railroad Parties, to which action of the Court the Railroad Parties duly excepted. All other costs are taxed against Opposing Interveners, to which action of the Court Opposing Interveners duly excepted. Opposing Interveners also duly excepted to the foregoing judgment in its entirety and each portion thereof granting the Motion for New Judgment and overruling Opposing Interveners' objections thereto.

ENTERED this 2nd day of March, 1955.

(Signed) H. T. Brown
Judge of the District Court
of Cherokee County, Texas